THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
OF THE UNITED STATES 1934

FEDERAL REGISTER

VOLUME 5 NUMBER 233

Washington, Saturday, November 30, 1940

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

CHAPTER VIII—SUGAR DIVISION OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION

PART 802—SUGAR DETERMINATIONS

DETERMINATION OF PROPORTIONATE SHARES FOR FARMS IN THE MAINLAND CANE SUGAR AREA FOR THE 1941 CROP

Whereas, section 302 of the Sugar Act of 1937, as amended, provides in part as follows:

(a) The amount of sugar or liquid sugar with respect to which payment may be made shall be the amount of sugar or liquid sugar commercially recoverable as determined by the Secretary, from the sugar beets or sugarcane grown on the farm and marketed (or processed by the producer) not in excess of the proportionate share for the farm, as determined by the Secretary, of the quantity of sugar beets or sugarcane for the extraction of sugar or liquid sugar required to be processed to enable the producing area in which the crop of sugar beets or sugarcane is grown to meet the quota (and provide a normal carry-over inventory) estimated by the Secretary for such area for the calendar year during which the larger part of the sugar or liquid sugar from such crop normally would be marketed.

(b) In determining the proportionate shares with respect to a farm, the Secretary may take into consideration the past production on the farm of sugar beets and sugarcane marketed (or processed) for the extraction of sugar or liquid sugar and the ability to produce such sugar beets or sugarcane, and the Secretary shall, insofar as practicable, protect the interests of new producers and small producers and the interests of producers who are cash tenants, share-tenants, adherent planters, or share-croppers;

and

Whereas, subsection (c) of section 301 of the said act provides, as one of the conditions for payment to producers of sugar beets and sugarcane, as follows:

(c) That there shall not have been marketed (or processed) an amount (in terms of planted acreage, weight, or recoverable sugar content) of sugar beets or sugarcane grown on the farm and used for the production of sugar or liquid sugar to be marketed in, or so as to compete with or otherwise directly affect interstate or foreign commerce, in excess of the proportionate share for the farm, as determined by the Secretary pursuant to the provisions of section 302, of the total quantity of sugar beets or sugarcane required to be processed to enable the area in which such sugar beets or sugarcane are produced to meet the quota (and provide a normal carry-over inventory) as estimated by the Secretary for such area for the calendar year during which the larger part of the sugar or liquid sugar from such crop normally would be marketed;

Now, therefore, pursuant to the foregoing sections of said act, I, Claude R. Wickard, Secretary of Agriculture, do hereby make the following determination:

§ 802.26c *Proportionate shares for farms in the mainland cane sugar area for the 1941 crop*—(a) *General.* The proportionate share of sugarcane, in terms of planted acres, for the 1941 crop for any farm in the mainland cane sugar area, except as provided in paragraphs (b), (c), and (d) hereof, shall be equal to the greater of either:

(1) The 1940 proportionate share for the farm, or

(2) the planted proportionate share acreage measured for harvest on the farm under the 1938 mainland sugarcane program.

In no event, however, shall the 1941 proportionate share for any such farm be greater than 90.75 per centum of the maximum proportionate share obtainable for the farm under the 1938 mainland sugarcane program.

(b) *Proportionate shares for farms with proportionate shares for 1940 of ten acres or less and for new growers.* The proportionate share of sugarcane, in terms of planted acres, for the 1941 crop for any farm having a proportionate share for the 1940 crop of ten acres or less, or for any farm for which a proportionate share was not established in 1940 (new grower), shall be the greater of either:

(1) The planted proportionate share acreage measured for harvest on the

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FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following legal holidays by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500), under regulations prescribed by the Administrative Committee, approved by the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.25 per month or $12.50 per year; single copies 10 cents each; payable in advance. Remit money order payable to the Superintendent of Documents directly to the Government Printing Office, Washington, D. C.

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farm under the 1940 mainland sugarcane program, or

(2) the lesser of either: (i) ten acres, or (ii) one-third of the acreage on the farm suitable for the production of sugarcane.

(c) *Proportionate shares for producer-owned and producer-controlled cooperatives.* The proportionate share for any farm operated by a producer-owned and producer-controlled cooperative association which is eligible to obtain a loan under or pursuant to any existing Act of Congress, and which was organized prior to the date hereof, shall not be less than the lesser of either:

(1) Ten acres multiplied by the number of members of the association engaged in the production of sugarcane on the farm, or

(2) one-third of the acreage on the farm suitable for the production of sugarcane.

(d) *Minimum proportionate share.* The minimum proportionate share for any farm in the mainland cane sugar area for the 1941 crop shall be:

(1) For any farm on which the planted proportionate share acreage measured for harvest under the 1940 mainland sugarcane program was in excess of ten acres, not less than ten acres;

(2) for any farm for which a 1939 proportionate share was established under the proviso in paragraph (a) of the determination of proportionate shares for the 1939 crop, not less than the planted proportionate share acreage measured for harvest under the 1939 mainland sugarcane program; or

(3) in any event, not less than five acres.

(e) *Tenant and sharecropper protection.* The provisions of this determination are subject to the following conditions:

(1) That no change shall have been made in the leasing or cropping agreements for the purpose of diverting to producers any payment to which tenants or sharecroppers would be entitled if their 1940 leasing or cropping agreements were in effect;

(2) That there shall have been no interference by any producer with any contracts heretofore entered into by tenants or sharecroppers for the sale of their sugarcane or their share of the sugarcane produced on the farm. (Sec. 302, 50 Stat. 910; 7 U.S.C., Supp. V, 1132)

Done at Washington, D. C., this 29th day of November 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CLAUDE R. WICKARD,
Secretary of Agriculture.

[F. R. Doc. 40-5214; Filed, November 29, 1940; 11:34 a. m.]

CHAPTER IX—SURPLUS MARKETING ADMINISTRATION

[Order No. 22, as Amended]

PART 922—MILK IN CINCINNATI, OHIO, MARKETING AREA

Whereas the Secretary of Agriculture of the United States of America, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended (48 Stat. 31), and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), issued an order, as amended, regulating the handling of milk in the Cincinnati, Ohio, marketing area, said order, as amended, being effective May 13, 1939, and being amended effective November 21, 1939; and

Whereas the Secretary, having reason to believe that the further amendment of said order, as amended, would tend to effectuate the declared policy of said act, gave, on the 12th day of July 1940, notice of a public hearing to be held at Cincinnati, Ohio, which hearing was held on the 17th, 19th, and 20th days of July 1940, and reopened [1] on the 11th and 12th days of September 1940, on certain proposed amended provisions of said order, as amended, and at said time and place conducted a public hearing at which all interested parties were afforded an opportunity to be heard on the proposed amended provisions of said order, as amended; and

Whereas after such hearing and after the tentative approval, on the 4th day of November 1940, by the Secretary, of a marketing agreement, as amended, handlers of more than 50 percent of the volume of milk covered by such order, as amended, which is marketed within the Cincinnati, Ohio, marketing area, refused or failed to sign such tentatively approved marketing agreement, as amended, relating to milk; and

Whereas the Secretary determined [2] on the 26th day of November 1940, said determination being approved by the President of the United States on the 27th day of November 1940, that said refusal or failure tends to prevent the effectuation of the declared policy of said act and that the issuance of this order, as amended, is the only practical means, pursuant to such policy, of ad-

[1] 5 F.R. 3594.
[2] See p. 4742.

vancing the interests of producers of milk in said area and is approved or favored by over 67 percent of the producers who voted in a referendum conducted by the Secretary, and who, during the month of June 1940, said month having been determined by the Secretary to be a representative period, were engaged in the production of milk for sale in the Cincinnati, Ohio, marketing area; and

Whereas, the Secretary finds, upon the evidence introduced at the above-mentioned public hearing, said findings being in addition to the findings made upon the evidence introduced at the hearing on said order and at the hearings on said order, as amended and the amendments thereto, and in addition to the other findings made prior to or at the time of the original issuance of said order (all of which findings are hereby ratified and affirmed, save only as such findings are in conflict with the findings hereinafter set forth):

§ 922.0 *Findings.* (a) That the prices calculated to give milk handled in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to section 2 and section 8e of said act, are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply of and demand for milk, and that the minimum prices set forth in this order, as amended, are such prices as will reflect such factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(b) That the other provisions of this order, as amended, are necessary for the more effective administration of said order, as amended;

(c) That the order, as amended, regulates the handling of milk in the same manner as, and is applicable only to handlers specified in, a tentatively approved marketing agreement, as amended, upon which a hearing has been held; and

(d) That the issuance of this order, as amended, and all of its terms and conditions will tend to effectuate the declared policy of the act:

Now, therefore, the Secretary of Agriculture, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, hereby orders that such handling of milk in the Cincinnati, Ohio, marketing area as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, be in conformity to and in compliance with the following terms and conditions:*

*§§922.0 to 922.11 inclusive, issued under the authority contained in 48 Stat. 31 (1933); 7 U.S.C. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937); 7 U.S.C. 601 et seq. (Supp. IV, 1938).

§ 922.1 *Definitions*—(a) *Terms.* The following terms shall have the following meanings:

(1) The term "Secretary" means the Secretary of Agriculture of the United States.

(2) The term "Cincinnati, Ohio, marketing area," hereinafter called the "marketing area," means the city of Cincinnati, Ohio, and the territory included within the boundary lines of Hamilton County, Ohio.

(3) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(4) The term "producer" means any person who produces milk which is received by a handler at a plant from which, under approval of the proper health authorities, milk is disposed of as milk in the marketing area: *Provided,* That if such producer has not regularly distributed milk in the marketing area or has not disposed of milk to a handler for a period of 30 days prior to May 1, 1938, but begins the regular delivery of milk to a handler, he shall be known as a "new producer" for a period beginning with the date of his first delivery of milk and including the first 2 full calendar months of regular delivery following the date of first delivery to a handler, after which he shall be known as a producer.

(5) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, or other handlers, all, or a portion, of which milk is disposed of as milk in the marketing area, and who, on his own behalf or on behalf of others, engages in such handling of milk as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products. This definition shall not be deemed to include any person from whom emergency milk is received or any person who handles only milk of his own production.

(6) The term "delivery period" means any calendar month.

(7) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(8) The term "market administrator" means the agency which is described in Sec. 922.2 for the administration hereof.

(9) The term "emergency milk" means milk received by a handler from sources other than producers or new producers under a permit to receive such milk issued to him by the proper health authorities.

(10) The term "base" means the quantity of milk calculated for each producer pursuant to § 922.8 (d).

(11) The term "excess" means the quantity of milk received from each producer in excess of his base.

(12) The term "cooperative association" means any cooperative association of producers which the Secretary determines (i) to have its entire activities under the control of its members, and (ii) to have and to be exercising full authority in the sale of milk of its members.*

§ 922.2 *Market administrator*—(a) *Designation.* The agency for the administration hereof shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) *Powers.* The market administrator shall:

(1) Administer the terms and provisions hereof; and

(2) Report to the Secretary complaints of violations of the provisions hereof.

(c) *Duties.* The market administrator shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(2) Pay, out of the funds provided by § 922.9, the cost of his bond, his own compensation, and all other expenses which are necessarily incurred in the maintenance and functioning of his office.

(3) Keep such books and records as will clearly reflect the transactions provided for herein, and surrender the same to his successor or to such other person as the Secretary may designate.

(4) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 2 days after the date upon which he is required to perform such acts, has not (i) made reports pursuant to § 922.3 or (ii) made payments pursuant to §§ 922.7 and 922.9.

(5) Promptly verify the information contained in the reports submitted by handlers.*

§ 922.3 *Reports of handlers*—(a) *Submission of reports.* Each handler shall report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) On or before the 10th day after the end of each delivery period, (a) the receipts of milk at each plant from producers and new producers, (b) the receipts of milk at each plant from handlers, (c) the receipts at each plant of the milk if any, produced by him, (d) the receipts of milk and cream at each plant from any other source, if any, (e) the utilization of all receipts of milk for the delivery period, and (f) the name and address of each new producer.

(2) Within 10 days after the market administrator's request with respect to each

producer and new producer for whom such information is not in the files of the market administrator and with respect to a period or periods of time designated by the market administrator (a) the name and address, (b) the total pounds of milk received, (c) the average butterfat test of milk received, and (d) the number of days upon which milk was received.

(3) On or before the 10th day after the end of each delivery period, his producer pay roll, which shall show for each producer and new producer (a) the total receipts of base and excess milk with the average butterfat test thereof, (b) the amount of the advance payment to such producer or new producer made pursuant to § 922.7 (a), and (c) the deductions and charges made by the handler.

(4) On or before the 5th day after the end of each delivery period, the disposition of Class I milk outside the marketing area as follows: (a) the amount and the utilization of such milk, (b) the butterfat test thereof, (c) the date of such sale or disposition, (d) the point of use, (e) the plant from which such milk was shipped, and (f) such other information with respect thereto as the market administrator may request.

(5) On or before the day such handler receives emergency milk, his intention to receive such milk.

(6) On or before the 10th day after the end of each delivery period, the receipts of emergency milk, as follows: (a) the amount of such milk, (b) the date or dates upon which such milk was received during the delivery period, (c) the plant from which such milk was shipped, (d) the price per hundredweight paid, or to be paid, for such milk, (e) the utilization of such milk, and (f) such other information with respect thereto as the market administrator may request.

(b) *Verification of reports.* Each handler shall make available to the market administrator or his agent (1) those records which are necessary for the verification of the information contained in the reports submitted in accordance with this section, and (2) those facilities which are necessary for the sampling and weighing of the milk of each producer and new producer.*

§ 922.4 *Classification of milk*—(a) *Basis of classification.* Milk received by each handler, including milk produced by him, if any, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section.

(b) *Classes of utilization.* The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of in the form of milk or milk drinks, whether plain or flavored, and all milk not accounted for as Class II milk or Class III milk.

(2) Class II milk shall be all milk used to produce cream (for consumption as cream), creamed buttermilk, and creamed cottage cheese.

(3) Class III milk shall be all milk accounted for (a) as actual plant shrinkage but not to exceed 2½ percent of total receipts of milk from producers and new producers, and (b) as used to produce a milk product other than those specified in Class II milk.

(c) *Interhandler and nonhandler sales.* Milk disposed of by a handler to another handler or to a person who is not a handler but who distributes milk or manufactures milk products, shall be Class I milk: *Provided,* That if the selling handler on or before the 10th day after the end of the delivery period furnishes to the market administrator a statement, which is signed by the buyer and seller, that such milk was used as Class II milk or Class III milk, such milk shall be classified accordingly, subject to verification by the market administrator.

(d) *Computation of butterfat in each class prior to May 1, 1941.* For each delivery period prior to May 1, 1941, the market administrator shall compute for each handler the butterfat in each class, as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of butterfat received as follows: (i) multiply the weight of the milk received from producers and new producers by its average butterfat test, (ii) multiply the weight of the milk produced by him, if any, by its average butterfat test, (iii) multiply the weight of the milk and cream received from handlers, if any, by its average butterfat test, (iv) multiply the weight of emergency milk, if any, by its average butterfat test, (v) multiply the weight of milk and cream received from any other source, if any, by its average butterfat test, and (vi) add together the resulting amounts.

(2) Determine the total pounds of butterfat in Class I milk as follows: (i) convert to half pints the quantity of milk disposed of in the form of milk or milk drinks, whether plain or flavored, and multiply by 0.5375, (ii) multiply the result by the average butterfat test of such milk, and (iii) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk and Class III milk computed pursuant to subparagraphs (3) and (4) of this paragraph is less than the total pounds of butterfat received, computed in accordance with subparagraph (1) of this paragraph, an amount equal to the difference shall be added to the quantity of butterfat determined pursuant to (ii) of this subparagraph.

(3) Determine the total pounds of butterfat in Class II milk as follows: (i) multiply the actual weight of each of the several products of Class II milk by its average butterfat test and (ii) add together the resulting amounts.

(4) Determine the total pounds of butterfat in Class III milk as follows: (i) multiply the actual weight of each of the several products of Class III milk by its average butterfat test, (ii) subtract the total pounds of butterfat in Class I milk and Class II milk computed pursuant to subparagraphs (2) (ii) and (3) of this paragraph and the total pounds of butterfat computed pursuant to (i) of this subparagraph from the total pounds of butterfat computed pursuant to subparagraph (1) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purposes of this paragraph (but in no event shall such plant shrinkage allowance exceed 2½ percent of the total receipts of butterfat by the handler), and (iii) add together the resulting amounts.

(5) Determine the classification of the butterfat received from producers and new producers, as follows:

(i) Subtract from the total pounds of butterfat in each class the total pounds of butterfat which were received from other handlers and used in such class.

(ii) In the case of a handler who also distributes milk of his own production, subtract from the total pounds of butterfat in each class a further amount which shall be computed as follows: divide the total pounds of butterfat in said class by the total pounds of butterfat in all classes and multiply by the total pounds of butterfat produced by him.

(iii) In the case of a handler who has received emergency milk during the delivery period, subtract from the total pounds of butterfat in each class a further amount which shall be computed as follows: divide the total pounds of butterfat in said class by the total pounds of butterfat in all classes and multiply by the total pounds of butterfat contained in emergency milk received.

(iv) Subtract from the total pounds of butterfat in each class the total pounds of butterfat, except butterfat in emergency milk, which were received from sources other than producers, new producers, or handlers and used in such class.

(e) *Computation of milk in each class prior to May 1, 1941.* For each delivery period prior to May 1, 1941, the market administrator shall compute for each handler the hundredweight of milk in each class, which was received from producers and new producers and to which the prices set forth in § 922.5 apply, as follows:

(1) Divide the total pounds of butterfat computed for each class in accordance with paragraph (d) (5) of this section by the average test of all milk received from producers and new producers by such handler.

(f) *Computation of milk in each class after April 30, 1941.* For each delivery period subsequent to April 30, 1941, the market administrator shall compute for each handler the amount of milk in each class, as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of milk (i) received from producers and

new producers, (ii) produced by him, if any, (iii) received from other handlers, if any, (iv) received as emergency milk, if any, (v) the hundredweight of milk (and milk equivalent of cream converted at the average test of milk received from producers and new producers by the receiving handler) received from any other source, if any, and (vi) add together the resulting amounts.

(2) Determine the total pounds of butterfat received as follows: (i) multiply the weight of the milk received from producers and new producers by its average butterfat test, (ii) multiply the weight of the milk produced by him, if any, by its average butterfat test, (iii) multiply the weight of milk received from other handlers, if any, by its average butterfat test, (iv) multiply the weight of emergency milk, if any, by its average butterfat test, (v) multiply the weight of milk and cream received from any other source, if any, by its average butterfat test, and (vi) add together the resulting amounts.

(3) Determine the total pounds of milk in Class I as follows: (i) convert to half pints the quantity of milk disposed of in the form of milk or milk drinks, whether plain or flavored, and multiply by 0.5375, (ii) multiply the result by the average butterfat test of such milk and (iii) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk and Class III milk computed pursuant to subparagraphs (4) (ii) and (5) (ii) of this paragraph, is less than the total pounds of butterfat received, computed in accordance with subparagraph (2) of this paragraph, an amount equal to the difference shall be divided by 4.0 percent and the resulting amount shall be added to the quantity of milk determined pursuant to (i) of this subparagraph.

(4) Determine the total pounds of milk in Class II as follows: (i) multiply the actual weight of each of the several products of Class II milk by its average butterfat test, (ii) add together the resulting amounts, and (iii) divide the result obtained in (ii) of this subparagraph by 4.0 percent.

(5) Determine the total pounds of milk in Class III as follows: (i) multiply the actual weight of each of the several products of Class III milk by its average butterfat test, (ii) add together the resulting amounts, (iii) subtract the total pounds of butterfat in Class I milk and Class II milk, computed pursuant to subparagarphs (3) (ii) and (4) (ii) of this paragraph, and the total pounds of butterfat computed pursuant to (ii) of this subparagraph, from the total pounds of butterfat computed pursuant to subparagraph (2) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purposes of this paragraph (but in no event shall such plant shrinkage allowance exceed 2½ percent of the total receipts of butterfat by the handler), (iv) add together the results obtained in (ii) and (iii) of this subparagraph, and (v) divide the sum obtained in (iv) of this subparagraph by 4.0 percent.

(6) Determine the classification of milk received from producers and new producers as follows:

(i) Subtract pro rata out of each class the quantity of milk produced by such handler.

(ii) Subtract from the total pounds of milk in each class the total pounds of milk which were received from other handlers and used in such class.

(iii) Subtract pro rata out of each class the total pounds of emergency milk.

(iv) Subtract from the total pounds of milk in each class the total pounds of milk (and milk equivalent of cream converted at the average test of milk received from producers and new producers by the receiving handler), except emergency milk, received from sources other than producers, new producers, or handlers and used in such class.

(g) *Reconciliation of utilization of milk by classes with receipts of milk from producers and new producers.* (1) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (f) of this section, is less than the receipts of milk from producers and new producers, the market administrator shall increase the total pounds of milk in Class III for such handler by an amount equal to the difference between the receipts of milk from producers and new producers and the total utilization of milk by classes for such handler.

(2) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (f) of this section, is greater than the receipts of milk from producers and new producers, the market administrator shall decrease the total pounds of milk in Class III for such handler by an amount equal to the difference between the receipts of milk from producers and new producers and the total utilization of milk by classes for such handler.*

§ 922.5 *Prices*—(a) *Class prices.* Each handler shall pay at the time and in the manner set forth in § 922.7 not less than the following prices for milk received at such handler's plant, on the basis of milk of 4.0 percent butterfat content, as follows:

(1) Class I milk—$3.00 per hundredweight for all delivery periods prior to May 1, 1941, and $2.45 per hundredweight for all delivery periods subsequent to April 30, 1941: *Provided*, That with respect to Class I milk disposed of by a handler through a recognized relief agency or under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $2.15 per hundredweight for all delivery periods prior to May 1, 1941, and $1.80 per hundredweight for all delivery periods subsequent to April 30, 1941.

(2) Class II milk—$2.25 per hundredweight for all delivery periods prior to May 1, 1941, and $1.80 per hundredweight for all delivery periods subsequent to April 30, 1941.

(3) Class III milk—Except as set forth in subparagraph (4) of this paragraph, the price per hundredweight which shall be calculated by the market administrator as follows: multiply by 4 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 30 percent thereof.

(4) In the case of Class III milk disposed of as butter the price per hundredweight shall be the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, plus 2 cents, multiplied by 4. In the event that the total receipts of milk, excepting emergency milk, by all handlers from producers and new producers during the delivery period, as ascertained by the market administrator from reports submitted by handlers pursuant to § 922.3 (a), are less than 125 percent of the total quantity of milk disposed of as Class I and Class II milk by such handlers, computed pursuant to § 922.4, the price set forth above shall apply to a quantity of milk disposed of as butter but not to exceed 10 percent of such Class I and Class II milk.

(b) *Price of milk disposed of outside the marketing area.* The price to be paid by handlers for Class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be, as ascertained by the market administrator, such price as is being paid to farmers in the market where such milk was disposed of, for milk of equivalent use, subject to a reasonable adjustment on account of transportation with respect to Class I milk moved from the handler's plant in the marketing area to the plant outside the marketing area where such milk was loaded on wholesale and retail routes.

(c) *Computation of value of milk for each handler.* (1) For each delivery period prior to May 1, 1941, the market administrator shall compute the value of milk which each handler has received from producers and new producers, as follows:

(i) Multiply the hundredweight of milk in each class, computed in accordance with § 922.4 (e) (1), by the respective class price for 4.0 percent milk: *Provided*, That if the average butterfat test of milk received from producers and new producers by such handler is more than 4.0 percent, there shall be added to the respective Class I and Class II prices for 4.0 percent milk, 4 cents per hundredweight, and to the respective prices for Class III milk as provided in paragraph (a) of this section there shall be added an

amount equal to 1/40 of such respective Class III prices, for each one-tenth of 1 percent of average butterfat content above 4.0 percent; and, if the average butterfat content of milk received from producers and new producers by such handler is less than 4.0 percent, there shall be subtracted from the respective Class I and Class II prices for 4.0 percent milk, 4 cents per hundredweight, and from the respective prices for Class III milk as provided in paragraph (a) of this section there shall be deducted an amount equal to 1/40 of such respective Class III prices, for each one-tenth of 1 percent of average butterfat content below 4.0 percent: *And, provided further,* That if such handler has received milk (or cream), except emergency milk, from sources other than producers, new producers or handlers, as referred to in § 922.4 (d) (5) (iv), and has disposed of such milk (or cream) other than as butter, there shall be added to the value of milk thus determined an amount computed as follows: multiply the hundredweight of such milk (or milk equivalent of cream) by the difference between the Class III price set forth in § 922.5 (a) (4) and the price applicable to the class in which it was disposed.

(ii) Add together the resulting amounts.

(iii) If, in the verification of reports submitted by the handler, the market administrator discovers errors in such reports which result in payments due the producer-settlement fund or the handler for any previous delivery periods, there shall be added or subtracted, as the case may be, the amount necessary to correct any such errors.

(2) For each delivery period subsequent to April 30, 1941, the market administrator shall compute the value of milk which each handler has received from producers and new producers, as follows:

(i) Multiply the hundredweight of milk in each class, computed in accordance with § 922.4 (f) and (g) by the respective class price for 4.0 percent milk: *Provided,* That if the average butterfat content of milk received from producers and new producers by such handler is more than 4.0 percent, there shall be added to each class price an amount equal to 1/40 of the price for Class III milk, as set forth in § 922.5 (a) (4), for each one-tenth of 1 percent of average butterfat content above 4.0 percent; and if the average butterfat content of milk received from producers and new producers by such handler is less than 4.0 percent, there shall be subtracted from each class price an amount equal to 1/40 of such price for Class III milk, for each one-tenth of 1 percent of average butterfat content below 4.0 percent: *And, provided further,* That if such handler has received milk (or cream), except emergency milk, from sources other than producers, new producers, or handlers, as referred to in § 922.4 (f) (6) (iv) and has disposed of such milk (or cream) other than as butter, there shall be added to the value of milk thus determined an amount computed as follows: multiply the hundredweight of such milk (or milk equivalent of cream) by the difference between the Class III price set forth in § 922.5 (a) (4) and the price applicable to the class in which it was disposed. For the hundredweight of milk involved in any adjustment made pursuant to § 922.4 (g), the handler shall be debited or credited, as the case may be, at the Class III price set forth in § 922.5 (a) (4).

(ii) Add together the resulting amounts.

(iii) If, in the verification of reports submitted by the handler, the market administrator discovers errors in such reports which result in payments due the producer-settlement fund or the handler for any previous delivery periods, there shall be added or subtracted, as the case may be, the amount necessary to correct any such errors.

(d) *Notification to each handler of value of milk.* On or before the 13th day after the end of each delivery period, the market administrator shall bill each handler for the value of milk computed in accordance with this section.*

§ 922.6 *Computation and announcement of uniform base price.* For each delivery period, the market administrator shall compute the uniform base price, as provided in paragraph (a) of this section.

(a) *Computation of uniform base price.* The market administrator shall compute the uniform price per hundredweight of base milk received by handlers during each delivery period as follows:

(1) Add together the values of milk as computed in § 922.5 (c) for each handler who made the payments to the producer-settlement fund as required by § 922.7 (b).

(2) Subtract from such sum the amounts calculated pursuant to § 922.8 (a) (2) and (a) (3).

(3) Subtract, if the average butterfat test of all milk is greater than 4.0 percent, or add, if the average butterfat test of such milk is less than 4.0 percent, an amount computed as follows:

Multiply the hundredweight of base milk by the variance of such average butterfat test from 4.0 percent, and multiply the resulting amount by $0.40 if the average price of butter, as described in § 922.5 (a) was more than 30 cents, or by $0.30 if such average price of butter was 30 cents or less.

(4) Add the cash balance, if any, in the producer-settlement fund.

(5) Divide by the total hundredweight of base milk received.

(6) Subtract from the figure obtained in subparagraph (5) of this paragraph not less than 4 cents nor more than 5 cents per hundredweight for the purpose of retaining a cash balance to provide against errors in reports and payments by handlers. The result shall be known as the uniform price per hundredweight for such delivery period for base milk of producers which contains 4.0 percent butterfat.

(b) *Announcement of prices and transportation rates.* On or before the beginning of the following delivery period, the market administrator shall notify each handler of the uniform base price for milk, and of the prices for Class III milk, and shall make public announcement of the uniform base price computation. From time to time, the market administrator shall also publicly announce the amounts per hundredweight deducted by each handler from the payments made to producers and new producers pursuant to § 922.8 for the transportation of milk from the farms of producers and new producers to such handler's plant or plants, as ascertained from reports submitted pursuant to § 922.3 (a) (3).*

§ 922.7 *Payment for milk*—(a) *Payment to producers and new producers.* On or before the 5th day after the end of each delivery period, each handler shall pay, with respect to all milk received during the delivery period, $1.00 per hundredweight of milk to each producer and $0.50 per hundredweight of milk to each new producer: *Provided,* That in the event the total amount of the deductions and charges authorized by any producer or new producer against payments due such producer or new producer for the delivery period next preceding is greater than the payment computed for such producer or new producer pursuant to § 922.8 (a) with respect to milk received from such producer or new producer during such preceding delivery period, the handler may deduct from the payment required by this paragraph a sum equal to the difference between such amounts.

(b) *Payment to producer-settlement fund.* On or before the 17th day after the end of each delivery period, each handler shall pay to the market administrator the amount of money which represents the value of milk billed to him for such delivery period, pursuant to § 922.5 (d), less the amount paid out to each producer and new producer in accordance with paragraph (a) of this section, and less the amount of the deductions and charges authorized by such producer or new producer which are itemized on the handler's producer pay roll: *Provided,* That in the calculation of the total amount of such deductions and charges to be subtracted, the deductions and charges to be considered with respect to each individual producer or new producer shall not be greater than an amount which, when added to the payment made to such producer or new producer in accordance with paragraph (a) of this section (inclusive of the deductions and charges authorized by paragraph (a) of this section), will not exceed the total value of the milk received from such producer or new producer. The market administrator shall maintain a separate fund, known as the producer-settlement fund, in which he shall deposit all payments of handlers received pursuant to this paragraph.*

§ 922.8 *Payments from producer-settlement fund*—(a) *Calculation of payments for each producer and new producer.* For each delivery period, the market administrator shall calculate, subject to the provision of subparagraph (5) of this paragraph, the payment due each producer and new producer from whom milk was received during such delivery period by a handler who paid into the producer-settlement fund in accordance with § 922.7, as follows:

(1) Multiply the hundredweight of base milk received from each producer by the uniform base price computed in accordance with § 922.6 (a): *Provided,* That if the milk of such producer was of an average butterfat content other than 4.0 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4 percent, 4 cents per hundredweight of base milk if the average price of butter as described in § 922.5 (a) was more than 30 cents, or 3 cents per hundredweight if such average price of butter was 30 cents or less.

(2) Multiply the hundredweight of excess milk received from each producer by the Class III price set forth in § 922.5 (a) (3); *Provided,* That if the milk of such producer was of an average butterfat content other than 4.0 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4.0 percent, 4 cents per hundredweight of excess milk if the average price of butter as described in § 922.5 (a) was more than 30 cents, or 3 cents per hundredweight if such average price of butter was 30 cents or less.

(3) Multiply the hundredweight of milk received from each new producer by the price for Class III milk not disposed of as butter, as provided in § 922.5 (a) (3): *Provided,* That if such milk was of an average butterfat content other than 4.0 percent, there shall be added or subtracted for each one-tenth of 1 percent variance above or below 4.0 percent, an amount per hundredweight equal to $\frac{1}{10}$ of such price for Class III milk.

(4) Subtract, in each case, the amount of the payment made pursuant to § 922.7 (a), and the charges and the deductions, if any, which are made pursuant to § 922.7 (b).

(5) For the purpose of computing payments pursuant to this paragraph the aggregate producer membership of any cooperative association which elects to have a cooperative association base under paragraph (d) of this section shall be considered as a single producer.

(b) *Payments.* On or before the 20th day after the end of each delivery period, the market administrator shall pay, subject to the provisions of § 922.10, to each cooperative association authorized to receive payments due producers or new producers who market their milk through such cooperative association, the aggregate of payments calculated pursuant to paragraph (a) of this section, for all producers and new producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments, and shall pay direct to each producer and new producer, who has not been certified as having authorized such cooperative association to receive such payments, the amount of the payments calculated pursuant to paragraph (a) of this section.

(c) *Delivery period base.* For each delivery period the base of each producer shall be a quantity of milk calculated by the market administrator in the following manner: Multiply the applicable figure, effective pursuant to paragraph (d) of this section, by the number of days on which milk was received from such producer during the delivery period: *Provided,* That if no figure is effective for any producer, who is not also a handler, take the percentage of the total milk received from him in bulk by a handler during the period when he received the new producer price, which percentage is obtained by dividing the total Class I and Class II milk of all handlers by the total milk received from producers and new producers by such handlers during the delivery period when deliveries were first made by such producer to a handler.

(d) *Computation of daily base.* For the purpose of calculating, pursuant to paragraph (c) of this section, the delivery period base of producers, the market administrator shall compute a daily base with respect to deliveries of milk in bulk to handlers by each producer in the manner set forth in this paragraph: *Provided,* That any cooperative association, which shall notify the market administrator in writing and shall submit to him a certified list of its member producers within 15 days after the effective date hereof, or one full delivery period prior to the first day of any calendar quarter, shall be allotted a base as a single producer, such initial base to be equal to the sum of the bases computed, pursuant to this paragraph, for persons who are producer members of such cooperative association and to be effective on the first day of the delivery period following such notification: *And, provided further,* That if any producer member of such cooperative association should cease to market milk through such cooperative association, his base shall not be deducted from the base allotted to such cooperative association:

(1) Effective until the end of the calendar year 1941, subject to the adjustments provided in subparagraph (4) of this paragraph, divide the total milk received from such producer during the calendar months of September, October, and November, 1939, by the number of days on which milk was received from such producer, and adjust the figure so determined by such a percentage as will make the total of all such figures approximately equal to 125 percent of the daily average Class I and Class II milk disposed of during the calendar months of September, October, and November, 1939, by all handlers.

(2) Effective for each calendar year subsequent to 1941, subject to the adjustments provided in subparagraph (4) of this paragraph, divide the total base milk received from such producer (including a cooperative association which chooses, pursuant to this paragraph, to be considered as a single producer) for each of the 12 calendar months immediately prior to December of the calendar year preceding that for which bases are to be computed pursuant to this subparagraph, by the number of days on which milk was received from such producer in such 12 months, and adjust the figure so determined by such a percentage as will make the total of all such figures approximately equal 115 percent of the daily average Class I and Class II milk disposed of during such 12 months by all handlers, as determined on the basis of § 922.4 (f) and (g).

(3) On or before the 25th day after the close of the second full delivery period after regular milk deliveries are first made by a new producer to a handler, and upon receipt of certification from such producer that he is the sole owner of the herd producing such milk and that none of the deliveries from such herd is being received by a handler in the name of another person, the market administrator shall compute for such producer a daily base which shall be in effect for the remainder of the then current calendar year, as follows: divide the total milk received by a handler from such producer during the period when he received the new producer price by the number of days on which such milk was received, and multiply the figure so determined by the percentage which the sum of the Class I and Class II milk reported by all handlers bears to their total receipts of milk during the calendar month when regular deliveries were first made by such new producer to a handler.

(4) (i) On or before the 25th day after the end of each calendar quarter prior to May 1, 1941, the market administrator shall adjust the base of each producer if the total base deliveries of all producers during the first three of the four calendar months immediately preceding were in excess of 130 percent or less than 120 percent of the Class I and Class II milk disposed of by all handlers during such three months, as follows: Multiply the daily base of each producer by the percentage which will make the total of all such bases approximately equal to 125 percent of the daily average Class I and Class II milk disposed of by all handlers during such three months: *Provided,* That increases in base shall be allotted only to those producers whose deliveries in such three months were equal to or in excess of their bases.

(ii) On or before the 25th day after the end of each calendar quarter subsequent to April 30, 1941, the market ad-

ministrator shall adjust the base of each producer if the total base deliveries of all producers during the first three of the four calendar months immediately preceding were in excess of 120 percent or less than 110 percent of the Class I and Class II milk, as determined on the basis of § 922.4 (f) and (g), disposed of by all handlers during such three months, as follows: Multiply the daily base of each producer by the percentage which will make the total of all such bases approximately equal to 115 percent of the daily average Class I and Class II milk disposed of by all handlers during such three months: *Provided*, That increases in base shall be allotted only to those producers whose deliveries in such three months were equal to or in excess of their bases.

Bases adjusted pursuant to this subparagraph shall become effective on the first day of the new calendar quarter.

(5) *Base rules.* The following rules shall be observed by the market administrator with respect to the allotment and administration of bases.

(i) A producer who, as tenant, rents a farm, may be allotted a base if he rents the farm for cash.

(ii) A landlord who rents on shares is entitled to the entire base to the exclusion of the tenant if the landlord owns the entire herd, and the tenant is entitled to the entire base to the exclusion of the landlord if the tenant owns the entire herd on such farm: *Provided*, That a base allotted under a tenant and landlord relationship shall be a joint base and may be divided only if such relationship is terminated. If such tenant-landlord relationship is terminated, the base will be divided between the tenant and landlord according to such ownership of the cattle as may be shown.

(iii) A producer who ceases deliveries of milk to a handler for more than 2 full calendar months shall forfeit his base and, in the event he thereafter commences deliveries of milk to a handler he shall receive a base computed in the manner provided in subparagraph (3) of this paragraph for the allotment of bases to new producers, and shall be treated for purposes of this section as if he were a new producer.

(iv) Any producer who loses all or a portion of his herd on account of his cooperation with a recognized Federal or State Bang's disease eradication program and who has so certified to the market administrator shall retain his base for six months thereafter.

(v) No producer shall be permitted to transfer his base to another producer, except that should a producer sell his entire herd to one purchaser, who is a producer of record with the market administrator and provide the market administrator with a certified copy of the bill of sale within five (5) days after such sale of herd, the market administrator shall transfer the base of such producer to such purchaser.

(vi) In the event a producer who is a member of a cooperative association which has a cooperative association base leaves such cooperative association and becomes a member of another cooperative association also having a cooperative association base, no adjustment in the base of either cooperative association shall be made on account of the membership transfer.

(vii) In the event a producer terminates his membership in a cooperative association having a cooperative association base to become a member of a cooperative association not having a cooperative association base, or to become a nonmember producer, the market administrator shall compute a base for such producer which shall be equivalent to the base which would be in effect for such producer, pursuant to this paragraph, had he not been a member of any cooperative association at the time of the original allotment of base.

(viii) In the event a producer who is not a member of any cooperative association, or a producer who is a member of a cooperative association not having a cooperative association base, becomes a member of a cooperative association having a cooperative association base, he shall forfeit his base as an individual and no adjustment, on account of such membership, shall be made to the base of the cooperative association, of which the producer becomes a member.

(ix) In the event a cooperative association having a cooperative association base becomes ineligible to retain such base or elects to discontinue such base by giving written notice to the market administrator, such cooperative association shall forfeit such base and each producer member of such cooperative association shall be allotted a base by the market administrator which shall be equivalent to the base which would be in effect for such producer, pursuant to this paragraph, had he not been a member of any cooperative association at the time of original allotment of base.

(x) In computing a base for any cooperative association, the market administrator shall first determine the names of those producers on the membership list submitted pursuant to this paragraph by such cooperative association which are not duplicated on the membership list of any other producer organization by (1) requesting all other producer organizations which have not already done so to file certified lists of their membership and granting each organization a reasonable time to submit such a list, and (2) checking the names on the lists, submitted by such organizations within a reasonable period of time, against those on the list submitted by the cooperative association for which the base is being computed. The market administrator shall then eliminate from the base computations made for such cooperative association the milk of any producer whose name is duplicated in the list of any other producer organization, until the market administrator has made a determination, for the purpose of administrative action under this paragraph only, with respect to the association membership status of such producer, and shall allot such producer a base as a nonmember producer. If it is determined by the market administrator that such producer is a member of a cooperative association having a base, the base of such producer shall be added to the base of the cooperative association, effective on the first day of the delivery period in which the determination is made.*

§ 922.9 *Expense of administration*—(a) *Payment by handlers.* As his pro rata share of the expenses which will be necessarily incurred in the maintenance and functioning of the office of the market administrator, each handler, with respect to all milk received from producers and new producers, or produced by him, during the delivery period, shall pay to the market administrator, on or before the 17th day after the end of each delivery period, that amount per hundredweight, not to exceed 2 cents, which is announced by the market administrator on or before the 13th day after the end of the delivery period.*

§ 922.10 *Marketing services*—(a) *Deductions for marketing services.* The market administrator shall deduct an amount not exceeding 4 cents per hundredweight of milk (the exact amount to be determined by the market administrator), from the payments made pursuant to § 922.8 (b), with respect to those producers and new producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association, which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," for the purpose of performing for such producers and new producers the services set forth in paragraph (b) of this section.

(b) *Marketing services to be rendered.* The moneys received by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator for market information to, and for verification of weights, samples, and tests of milk received from producers and new producers for whom a cooperative association, as described in paragraph (a) of this section, is not performing the same services on a comparable basis, as determined by the market administrator, subject to the review of the Secretary.*

§ 922.11 *Effective time, suspension, or termination*—(a) *Effective time.* The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) *Suspension or termination of order, as amended.* The Secretary may suspend

or terminate this order, as amended, whenever he finds that this order, as amended, obstructs or does not tend to effectuate the declared policy of the act. This order, as amended, shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing power and duty of the market administrator.* If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall if so directed by the Secretary liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.*

Now therefore, Claude R. Wickard, Secretary of Agriculture, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 for the purpose and within the limitations therein contained and not otherwise, hereby executes and issues in duplicate this order, as amended, under his hand and the official seal of the Department of Agriculture in the city of Washington, District of Columbia, on this 29th day of November 1940, and declares this order, as amended, to be effective on and after the 2nd day of December 1940.

[SEAL] CLAUDE R. WICKARD,
Secretary of Agriculture.

[F. R. Doc. 40-5211; Filed, November 29, 1940; 11:33 a. m.]

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 2248]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF AVERY SALT COMPANY

§ 3.66 (c20) *Misbranding or mislabeling—Manufacture:* § 3.66 (d) *Misbranding or mislabeling—Nature:* § 3.66 (h) *Misbranding or mislabeling—Qualities or properties:* § 3.96 (a) (3.5) *Using misleading name—Goods—Manufacture:* § 3.96 (a) (4) *Using misleading name—Goods—Nature:* § 3.96 (a) (6) *Using misleading name—Goods—Qualities or properties.* Using, in connection with offer, etc., in interstate commerce, of salt, the word "smoke," or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during the process and course of its combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking or flavoring meats, prohibited; subject to the provision, however, that nothing in the order shall prohibit the respondent from using the terms "condensed smoke" or "liquid smoke" in enumerating or stating the ingredients of such salt when there has been added thereto a refined concentrate resulting from the destructive distillation of wood, and where the application of such product is in sufficient quantity to impart to such salt the flavor of smoke. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 114; 15 U.S.C., Sup. IV, sec. 45i) [Modified cease and desist order, Avery Salt Company, Docket 2248, November 19, 1940]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of November, A. D. 1940.

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on November 28, 1936, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act and on October 17, 1939, issued and subsequently served its order to cease and desist;[1] and it further appearing that on October 17, 1939, issued and subse-Circuit Court of Appeals for the Fourth Circuit rendered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars and directed the Commission to modify its said order to cease and desist in accordance with said decree;

Now, therefore, pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with said Court decree:

It is ordered, That respondent Avery Salt Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of salt in interstate commerce as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from: Using the word "smoke," or any other word or words signifying smoke, or implying use of smoke, to designate or describe salt offered for sale, or sold, for curing, preserving, smoking, or flavoring meats, unless the salt so described or designated has been or is directly subjected to the action and effect of the smoke from burning wood during the process and course of its combustion sufficiently to acquire from such source alone all of its smoke or smoke effects for use in curing, preserving, smoking or flavoring meats: *Provided,* That nothing in this order shall prohibit the respondent from using the terms "condensed smoke" or "liquid smoke" in enumerating or stating the ingredients of such salt when there has been added thereto a refined concentrate resulting from the destructive distillation of wood, and where the application of such product is in sufficient quantity to impart to such salt the flavor of smoke;

It is further ordered, That the respondent shall, within thirty days after service upon it of this modified order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-5201; Filed, November 29, 1940; 11:21 a. m.]

[Docket No. 3505]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF NOVELTY PREMIUM COMPANY

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Supplying, etc., in connection with offer, etc., in

[1] 4 F.R. 4389

commerce, of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or other articles of merchandise, others with push or pull cards, punch boards or other devices which are to be, or may be, used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Novelty Premium Company, Docket 3505, November 18, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Shipping, etc., in connection with offer, etc., in commerce, of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or other articles of merchandise, to agents or to distributors or to members of the public, push or pull cards, punch boards, or other devices which are to be, or may be, used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Novelty Premium Company, Docket 3505, November 18, 1940]

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* Selling, etc., in connection with offer, etc., in commerce, of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or other articles of merchandise, any merchandise by means of a game of chance, gift enterprise or lottery scheme, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Novelty Premium Company, Docket 3505, November 18, 1940]

§ 3.6 (i) *Advertising falsely or misleadingly—Free goods or service:* § 3.6 (ee) *Advertising falsely or misleadingly—Terms and conditions:* § 3.80 (i) *Securing agents or representatives falsely or misleadingly—Terms and conditions.* Using, in connection with offer, etc., in commerce, of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or other articles of merchandise, the terms "free" or "at absolutely no cost" or any other terms of similar import or meaning, to describe or refer to merchandise offered as compensation for distributing respondents' merchandise, unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "at absolutely no cost," or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed or sums of money to be paid in connection with obtaining such merchandise, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Novelty Premium Company, Docket 3505, November 18, 1940]

§ 3.6 (ee) *Advertising falsely or misleadingly—Terms and conditions:* § 3.80 (i) *Securing agents or representatives falsely or misleadingly—Terms and conditions.* Representing, in connection with offer, etc., in commerce, of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or other articles of merchandise, that respondents pay shipping charges on their merchandise, when in fact they do not pay such charges, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Novelty Premium Company, Docket 3505, November 18, 1940]

In the Matter of Joseph Saladoff and Sara Saladoff, Individually, and Trading As Novelty Premium Company

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 18th day of November, A. D. 1940.

This proceeding having been heard[1] by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondents not having filed brief and oral argument having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondents Joseph Saladoff and Sara Saladoff, individually and trading as Novelty Premium Company, or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or any other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

(1) Supplying to or placing in the hands of others push or pull cards, punch boards or other devices which are to be used, or may be used, in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme;

(2) Shipping, mailing or transporting to agents or to distributors or to members of the public, push or pull cards, punch boards, or other devices which are to be used, or may be used, in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme;

(3) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme;

(4) Using the terms "free" or "at absolutely no cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondents' merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "at absolutely no cost" or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed or sums of money to be paid in connection with obtaining such merchandise.

(5) Representing that respondents pay shipping charges on their merchandise, when in fact they do not pay such charges.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-5202; Filed, November 29, 1940; 11:21 a. m.]

[Docket No. 3653]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF HOME DIATHERMY COMPANY, INC.

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of products:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y) *Advertising falsely or misleadingly—Safety:* § 3.71 (e) *Neglecting, unfairly or deceptively, to make material disclosure—Safety.* Disseminating, etc., in connection with offer, etc., of respondent's "Home Diathermy" device, whether of long or short wave type, or of any similar device, any advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of said device, which advertisements represent, directly or through inference, that said device may be easily and safely used in the home, or that use thereof constitutes a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, or rheumatism, or that said device has any therapeutic value in the treatment of any of such diseases and conditions, or has any therapeutic value in the treatment of any other ail-

[1] 3 F.R. 2710.

ment, unless such advertisements are specifically limited to those cases of such disorders and ailments where acute inflammation, infection, pus formations, arteriosclerosis, or conditions in which there is a tendency to hemorrhage are not present; or which advertisements fail to reveal that the unsupervised use of said device by persons not skilled in the diagnosis, analysis, and methods of treatment of disease may result in serious and irreparable injury to health; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Home Diathermy Company, Inc., Docket 3653, November 20, 1940]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 20th day of November A. D. 1940.

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before John P. Bramhall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by R. A. McOuat, counsel for the Commission, and by Saul L. Harris, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, Home Diathermy Company, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a certain device designated as "Home Diathermy" whether of the long wave or short wave type, or any other device of substantially similar construction or possessing substantially similar qualities, whether sold under that name or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference that said device may be easily and safely used in the home, or that the use of said device constitutes a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, or rheumatism or that said device has any therapeutic value in the treatment of any of such diseases and conditions, or has any therapeutic value in the treatment of any other ailment unless such advertisement is specifically limited to those cases of such disorders and ailments where acute inflammation, infection, pus formations arteriosclerosis, or conditions in which there is a tendency to hemorrhage are not present; or which advertisement fails to reveal that the unsupervised use of this device by persons not skilled in the diagnosis, analysis, and methods of treatment of disease may result in serious and irreparable injury to health.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, which advertisement contains any of the representations prohibited in Paragraph One hereof; or which advertisement fails to reveal that the unsupervised use of the device by persons not skilled in the diagnosis, analysis and methods of treatment of disease may result in serious and irreparable injury to health.

It is further ordered, That the respondent shall, within ten (10) days after service upon it of this order file with the Commission an interim report in writing stating whether it intends to comply with this order, and, if so, the manner and form in which it intends to comply, and that within sixty (60) days after the service upon it of this order said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-5203; Filed, November 29, 1940; 11: 21 a. m.]

[Docket No. 4119]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF W. R. CASE & SONS CUTLERY COMPANY

§ 3.18 *Claiming indorsements or testimonials falsely:* § 3.66 (c) *Misbranding or mislabeling—Indorsements, approvals or awards:* § 3.66 (k1) *Misbranding or mislabeling—Success, use or standing:* § 3.96 (a) (3.2) *Using misleading name—Goods—Indorsements and testimonials.* Using, in connection with offer, etc., in commerce, of knives, the words "Case Scout" or "Scout," or any other word or words of similar import or meaning, to designate, describe or refer to respondent's knives, or otherwise representing that said knives are sponsored, endorsed or approved by the organization known as the Boy Scouts of America, or that said knives form a part of the equipment of the members of said organization, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, W. R. Case & Sons Cutlery Company, Docket 4119, November 19, 1940.]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of November, A. D. 1940.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, W. R. Case & Sons Cutlery Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of knives in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "Case Scout" or "Scout", or any other word or words of similar import or meaning, to designate, describe or refer to respondent's knives, or otherwise representing that said knives are sponsored, endorsed or approved by the organization known as the Boy Scouts of America, or that said knives form a part of the equipment of the members of said organization.

It is further ordered, That the respondent shall, within sixty (60) days after the service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-5204; November 29, 1940; 11:22 a. m.]

[Docket No. 4160]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF THYROLE PRODUCTS COMPANY

§ 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y) *Advertising falsely or misleadingly—Safety:* § 3.71 (e) *Neglecting, unfairly or deceptively, to make material disclosure—Safety.* Disseminating, etc., in connection with offer, etc., of respondent's medicinal preparation designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, or any other

[1] 4 F.R. 2173.

similar medicinal preparation, any advertisements by means of the United States mails, or in commerce, or by any means, to induce, directly or indirectly, purchase in commerce, etc., of said preparation, which advertisements represent, directly or through inference, that said medicinal preparation is a cure or remedy or a competent or effective treatment for obesity, or that said preparation is safe; or which advertisements fail to reveal that the use of said preparation may cause permanent injury to the heart, thyroid gland and other vital organs; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, Thyrole Products Company, Docket 4160, November 19, 1940]

In the Matter of I. Ralph Weinstock, an individual, trading as Thyrole Products Company

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of November, A. D. 1940.

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission and the answer by the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to the said facts, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, I. Ralph Weinstock, individually and trading as the Thyrole Products Company, or trading under any other name or names, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his medicinal preparation designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said medicinal preparation is a cure or remedy or a competent or effective treatment for obesity; that said preparation is safe; or which advertisement fails to reveal that the use of said preparation may cause permanent injury to the heart, thyroid gland and other vital organs;

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof, or which fails to reveal that the use of said preparation may cause permanent injury to the heart, thyroid gland and other vital organs.

It is further ordered, That the respondent shall within ten (10) days after the service upon him of this order file with the Commission an interim report in writing, stating whether he intends to comply with this order, and if so, the manner and form in which he intends to comply; and that within sixty (60) days after the service upon him of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-5205; Filed, November 29, 1940; 11:22 a. m.]

[Docket No. 4199]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF THE PRIMFIT TEXTILE COMPANY

§ 3.6 (j10) *Advertising falsely or misleadingly—History of product.* Representing, directly or indirectly, in connection with offer, etc., in commerce, of hosiery, that respondent's hosiery designated as "Jerks", or the same or similar hosiery designated by any other name, is the original garterless sock, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, The Primfit Textile Company, Docket 4199, November 20, 1940]

§ 3.6 (a) (22) *Advertising falsely or misleadingly—Business status, advantages or connections of advertiser—Producer status of dealer or seller—Manufacturer.* Representing, directly or indirectly, in connection with offer, etc., in commerce, of hosiery, that respondent is the manufacturer of the hosiery it sells, unless and until it actually owns and operates or directly and absolutely controls a manufacturing plant, factory or mill wherein such hosiery is manufactured, prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Cease and desist order, The Primfit Textile Company, Docket 4199, November 20, 1940]

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 20th day of November, A. D. 1940.

This proceeding having been heard [1] by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, The Primfit Textile Company, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hosiery, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. From representing, directly or indirectly, that its hosiery designated as "Jerks," or the same or similar hosiery designated by any other name, is the original garterless sock;

2. From representing, directly or indirectly, that it is the manufacturer of the hosiery it sells unless and until it actually owns and operates or directly and absolutely controls a manufacturing plant, factory or mill wherein such hosiery is manufactured.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 40-5206; Filed, November 29, 1940; 11:22 a. m.]

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

PART 270—INVESTMENT COMPANY ACT OF 1940

TEMPORARY EXEMPTION FROM SECTION 19

Acting pursuant to the Investment Company Act of 1940, particularly section 6 (c) thereof, and finding that such action is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, the Securities and Exchange Com-

[1] 5 F.R. 4252.

[1] 5 F.R. 3536.

mission hereby adopts § 270.6c–6 (Rule N–6C–6) to read as follows:

§ 270.6c–6 *Temporary exemption from section 19.* Every registered investment company shall be exempt from the provisions of section 19. This rule shall terminate as of the close of business on December 31, 1940, and shall not apply to any dividend or distribution declared for payment on any date subsequent to December 31, 1940. (Pub. 768, 76th Cong.) [Gen. Rules & Regs., Rule N–6C–6, effective November 29, 1940]

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–5228; Filed, November 29, 1940; 11:49 a. m.]

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER II—RAILROAD RETIREMENT BOARD

PART 209—MILITARY SERVICE

REGULATIONS UNDER THE RAILROAD RETIREMENT ACT OF 1937

Authority for Regulations

Sections 209.00, 209.03, and 209.12 of these Regulations are issued, effective October 8, 1940, by the Railroad Retirement Board under the general authority contained in section 10 of the Act of June 24, 1937 (sec. 10, 50 Stat. 314; 45 U.S.C. Sup. III, 228j) as amended by Title VI, Part II, Sections 625 and 626 of Public No. 801, 76th Congress, Chapter 757, 3d Session, approved October 8, 1940.[1]

§ 209.00 *Military service; statutory provisions.*

Sec. 3A. (a) For the purposes of determining eligibility for an annuity and computing an annuity, including a minimum annuity, there shall also be included in an individual's years of service, within the limitations hereinafter provided in this section, voluntary or involuntary military service of an individual prior to January 1, 1937, within or without the United States during any war service period: *Provided, however,* That such military service shall be included only subject to and in accordance with the provisions of subsection (b) of section 3, in the same manner as though military service were service rendered as an employee: *Provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(b) For the purpose of this section and section 202, as amended, an individual shall be deemed to have been in "military service" when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States who was ordered to active duty in any such force for a period of thirty days or less shall be deemed to have been active service in such force during such period.

(c) For the purpose of this section and section 202, as amended, a "war service period" shall mean (1) any war period, or (2) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by any Act of Congress, any regulation promulgated, order issued, or proclamation made, in pursuance of such Act, to enter and continue in military service.

(d) For the purpose of this section and section 202, as amended, a "war period" shall be deemed to have begun on whichever of the following dates is the earliest: (1) the date on which the Congress of the United States declared war; or (2) the date as of which the Congress of the United States declared that a state of war has existed; or (3) the date on which war was declared by one or more foreign states against the United States; or (4) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (5) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

(e) For the purpose of this section and section 202, as amended, a "war period" shall be deemed to have ended on the date on which hostilities ceased.

(f) Military service shall not be included in the years of service of an individual unless, in the calendar year in which his military service in a war service period began, or in the calendar year next preceding such calendar year, he rendered service for compensation to an employer, or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative.

(g) A calendar month in which an individual was in military service which may be included in the individual's years of service or service period, as the case may be, shall be counted as a month of service: *Provided, however,* That no calendar month shall be counted as more than one month of service.

(h) In determining the monthly compensation for computing an annuity military service and any remuneration therefor shall be disregarded.

(i) In the event military service is or has been used as the basis or as a partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act of Congress, any annuity under this Act or the Railroad Retirement Act of 1935, which is based in part on such military service and is with respect to a calendar month for all or part of which such pension or other benefit is also payable, shall be reduced with respect to that month by the proportion which the number of years of service by which such military service increases the years of service, or the service period, as the case may be, bears to the total years of service, or by the aggregate amount of such pension or other benefit with respect to that month, whichever would result in the smaller reduction.

(j) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on a periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subsection shall be conclusive on the Board: *Provided,* That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(k) In the event that an individual was, on or before the date of enactment of the Second Revenue Act of 1940, denied an annuity but could have been granted an annuity under the provisions of this Act or the Railroad Retirement Act of 1935 had military service been included in his years of service or service period, as the case may be, no annuity shall be payable with respect to such individual, or with respect to his death, by reason of the provisions of this section, unless such individual files a new application with the Board. In determining the earliest date upon which an annuity can begin to accrue for such an individual in accordance with the provisions of section 2, the filing date of the application shall be the date on which such new application is filed.

(l) An individual who, on or before the date of enactment of the Second Revenue Act of 1940, was awarded an annuity under the provisions of this Act or the Railroad Retirement Act of 1935, but whose annuity would have been increased if his military service had been included in his years of service or service period, as the case may be, may, notwithstanding the previous award of an annuity, make application (in such manner and form as may be prescribed by the Board) for an increase in such annuity based on his military service. Upon the filing of such application, if the Board finds that the military service thus claimed is creditable and would result in an increase in the annuity, the Board, notwithstanding the previous award, shall recertify the annuity on an increased basis in the same manner as though this section had been in effect at the time of the original certification: *Provided, however,* That if the annuity previously awarded is a joint and survivor annuity, the increased annuity shall be a joint and survivor annuity of the same type except that if on the date the increase begins to accrue the individual has no spouse for whom the election of the joint and survivor annuity was made, the increase on a single life basis shall be added to the individual's annuity: *And provided further,* That such increase in the annuity shall not begin to accrue more than sixty days before the filing date of the application for an increase in the annuity based on military service, and in the event the annuity is a joint and survivor annuity, the actuarial value of the increase in annuity shall be computed as of the effective date of the increase.

(m) In addition to the amount authorized to be appropriated in subsection (a) of section 15 of this Act, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1941, an amount sufficient to meet the additional expenditures necessary to be made during each such fiscal year by reason of crediting under the Railroad Retirement Acts military service prior to January 1, 1937. The Railroad Retirement Board, as promptly as practicable after the date of enactment of the Second Revenue Act of 1940, and thereafter annually, shall submit to the Bureau of the Budget estimates of such military service appropriations to be made to the account in addition to the annual estimates by the Board, in accordance with subsection (a) of section 15 of this Act, of the appropriations to be made to the account to provide for the payment

[1] Board Order 40–676, November 28, 1940.

of annuities, pensions and death benefits not based on military service. Each such estimate shall take into account the excess or the deficiency, if any, in such military service appropriation for the preceding fiscal year.

§ 209.03 *Military service; application for annuities based on military service.* No individual shall be entitled to an annuity, or to an increase in an annuity, based on military service unless he has in the manner provided in part 210 of these regulations filed an application claiming credit for military service, in such form as the Board may prescribe. The application shall be filed within sixty days from the date on which such annuity or increase in an annuity is to begin to accrue, and may be filed by any individual, including individuals whose claims for annuities not based on military service have theretofore been granted or denied. In no event shall an annuity or increase in an annuity based on military service begin to accrue before October 8, 1940.

§ 209.12 *Military service; war service period; war period*—(a) *War service period.* A war service period includes, with respect to any individual,

(1) any period during which the individual was required by or pursuant to any Act of Congress to enter and continue in military service, and

(2) any period of military service in a war period, providing the individual entered military service in such war period, and

(3) any period of military service immediately following a war period, whether or not such service was entered upon voluntarily, and prior to discharge from such service or reenlistment therein, providing the individual entered military service in such war period.

(b) *War period.* A war period begins on the date on which the Congress of the United States declared war, or on the date as of which the Congress of the United States declared a state of war to have existed, or on the date on which war was declared by one or more foreign states against the United States, or on the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states, or on the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government, whichever date is the earliest. A war period ends on the date on which hostilities shall have ceased.

(1) *World War.* The World War period began April 6, 1917, and ended November 11, 1918.

(2) *Spanish American War.* The Spanish American War period began April 21, 1898, and ended August 13, 1898.

By Authority of the Board.

[SEAL] MURRAY W. LATIMER.

NOVEMBER 29, 1940.

[F. R. Doc. 40-5229; Filed, November 29, 1940; 12:05 p. m.]

TITLE 24—HOUSING CREDIT

CHAPTER IV—HOME OWNERS' LOAN CORPORATION

PART 403—PROPERTY MANAGEMENT

SALE OF PROPERTIES TO FORMER BORROWERS

Section 403.10 is amended by changing the first sentence of the paragraph therein designated as (a)[1] to read as follows:

(a) Unless authorized by the General Manager in the particular case, a sale to the former borrower or his spouse shall be made only at a price, computed as of the date of the Corporation's acceptance of the offer to purchase, equal to ledger value, including an amount equivalent to interest accrued subsequent to the transfer of the property to the "in process of acquiring title" status, plus expenditures for credit reports, appraisal and reconditioning inspection fees and other inspection fees which have been charged to the Home Office Control Account pursuant to section 312 of the Consolidated Manual of the Home Owners' Loan Corporation, plus any accrued and unpaid charges against the property, except those the payment of which is to be assumed by the purchaser, plus estimated disbursements to be made by the Corporation in connection with the sale, but not including charges incurred by the Contract Management Broker within the limitations of his authority provided in § 403.14 of this Title or receipts or disbursements by the broker, not previously reported by him to the Corporation.

(Effective date December 1, 1940)

(Secs. 4 (a), 4 (k) of Home Owners' Loan Act of 1933, 48 Stat. 129, 132 as amended by Section 13 of the Act of April 27, 1934, 48 Stat. 647: 12 U.S.C. 1463 (a), (k)).

Adopted by the Federal Home Loan Bank Board on November 22, 1940.

[SEAL] J. FRANCIS MOORE, *Secretary.*

[F. R. Doc. 40-5208; Filed, November 29, 1940; 11:24 a. m.]

[1] 5 F.R. 1091.

Notices

WAR DEPARTMENT.

[Contract No. W 978 eng-1459]

SUMMARY OF CONTRACT FOR SUPPLIES

CONTRACTOR: GENERAL ELECTRIC CO.

Contract for: * * * Searchlight Units, 1941 Model, Complete.

Amount: $4,671,000.00.

Place: Office, Chief of Engineers, 1st and M Sts. NE., Washington, D. C.

This contract, entered into this 7th day of August 1940.

Scope of this contract. The contractor shall furnish and deliver * * * ea. Searchlight Units, 1941 model, complete, for the consideration stated $4,671,000.00, in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof.

Changes. Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Federal Specifications. Changes as to shipment and packing of all supplies may also be made as above provided.

Delays—Liquidated damages. If the contractor refuses or fails to make delivery of the materials or supplies within the time specified in Article 1, or any extension thereof, the actual damage to the Government for the delay will be impossible to determine, and in lieu thereof the contractor shall pay to the Government, as fixed, agreed and liquidated damages for each calendar day of delay in making delivery, the amount as set forth in the specifications or accompanying papers, and the contractor and his sureties shall be liable for the amount thereof.

Payments. The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either $1,000 or 50 percent of the total amount of the contract.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the Procurement Authorities shown herein, the available balances of which are sufficient to cover cost of same.

National Guard, 1940-1941 NG 15-443 P65-3030 A1405-01, Amt	$155,700.00
Engineer Service Army, 1940-41 Eng. 82 P3-3030 A0905-01, Amt	3,515,300.00
Engineer Service Army, 1940-41 Eng. 113 P3-3030 A(0905). 115-01	1,000,000.00

NEAL H. MCKAY,
Major, Quartermaster Corps,
Assistant to the Director of
Purchases and Contracts.

[F. R. Doc. 40-5197; Filed, November 29, 1940; 9:49 a. m.]

[Contract No. W 535 ac-15566, (3635)]

SUMMARY OF CONTRACT FOR SUPPLIES

CONTRACTOR: RYAN AERONAUTICAL COMPANY

Contract for: * * * PT-20A Airplanes, Spare Parts & Data.

Amount: $2,074,234.00.

Place: Matériel Division, Air Corps, U. S. Army, Wright Field, Dayton, Ohio.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following Procurement Authorities, the available balances of which are sufficient to cover cost of same:

AC 33 P 12-3037 A 0705.002-01_	$903,064.00
AC 28 P 82-3037 A 0705-01____	90,090.00
AC 63 P 12-3037 A 5907.004-1__	1,081,080.00

This contract, entered into this 22d day of August 1940.

ARTICLE 1. *Scope of this contract.* The contractor shall furnish and deliver to the Government all of the airplanes, spare parts and data as set forth more particularly in Article 16 hereof, for the consideration stated, Two Million Seventy Four Thousand Two Hundred Thirty-four Dollars ($2,074,234.00), in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof.

ART. 2. *Changes.* Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Federal Specifications. Changes as to shipment and packing of all supplies may also be made as above provided.

ART. 5. *Delays—Damages.* If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified in Article 1, or any extension thereof, the Government may by written notice terminate the right of the contractor to proceed with deliveries of such part or parts thereof as to which there has been delay.

ART. 8. *Payments.* The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein, for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either $1,000 or 50 percent of the total amount of the contract.

ART. 16. *Articles and data called for and payment therefor.* The Contractor shall furnish and deliver to the Government all of the following airplanes, spare parts and data at the prices hereinbelow indicated:

Item 1. * * * Airplanes, Primary Training * * * of the airplanes called for under the terms of this Item are for the United States Army Air Corps; the remaining * * * airplanes called for are for the United States Navy. Total cost, $1,801,800.00.

Item 2. Certain spare parts for all of the airplanes at a total price not exceeding $270,270.00. It being impracticable to designate at this time the particular parts and quantities thereof required, said spare parts and quantities required together with unit prices therefor will be itemized in a list to be furnished to the Contractor not later than * * * days from and after the date of receipt by the Government of the Percentage Breakdown of Component Parts called for under the terms of paragraph (3) hereof, which list will be designated as Exhibit "A" to this contract and will be attached to and made a part hereof.

Item 3. * * * Stress Analysis at a cost of $75.00.

Item 4. * * * Data, total not to exceed $1,500.00.

Item 5. * * * Weight and Balance Reports and Weight Statement. Total—$39.00.

Item 6. * * * Manuscript Copy of Handbook of Instructions at a cost of $500.00.

Item 7. * * * Bill of Material at a cost of $50.00.

Partial payments will be made as the work progresses at the end of each calendar month or as soon thereafter as practicable on authenticated statements of expenditures of the Contractor approved by the Contracting Officer.

The Government shall furnish to the Contractor, without cost therefor, for installation in the airplanes called for under the terms of this contract the equipment referred to in Item 1 of this Article as being Government-furnished.

ART. 22. *Option.* The Government is granted the right and option at any time within * * * days after date of approval of this contract to increase the total number of airplanes called for under the terms of Item 1 of Article 16 hereof by any amount not exceeding * * * and to increase the total quantity of spare parts called for under the terms of Item 2 of Article 16 hereof by any amount not exceeding * * * of the total money value of the additional airplanes which may be purchased under the terms of this Article. In the event of the exercise of this option, unit prices, delivery schedules and conditions governing the purchase of such additional airplanes and spare parts shall be negotiated between the parties hereto at the time of the exercise of such option.

ART. 23. *Advance payments.* Advance payments may be made from time to time for the supplies called for, when the Secretary of War deems such action necessary in the interest of the National Defense: *Provided, however,* That the total amount of money so advanced shall not exceed 30 per centum of the contract price of the articles called for.

ART. 24. *Termination when contractor not in default.* If, in the opinion of the Contracting Officer upon the approval of The Secretary of War, the best interests of the Government so require, this contract may be terminated by the Government, even though the contractor be not in default, by a notice in writing relative thereto from the Contracting Officer to the Contractor.

ART. 34. *Title to property where partial payments are made.* The title to all property upon which any partial payment is made prior to the completion of this contract, shall vest in the Government.

ART. 36. *Fire insurance.* The contractor agrees to insure against fire all property in its possession upon which a partial payment is about to be made, such insurance to be in a sum at least equal to the amount of such payment plus all other partial payments, if any, theretofore made thereon, and further agrees to keep such property so insured, free of cost to the Government, until the same is delivered to the Government.

[Serial No. 3357–Date 9/18/40, Change No. 1 to Contract No. W 535 ac–15566, Dated August 22, 1940]

Change Order

WAR DEPARTMENT, AIR CORPS, MATERIEL DIVISION

WRIGHT FIELD, DAYTON, OHIO

Ryan Aeronautical Company, San Diego, California.
Additional Airplanes.
Contract W 535 ac–15566.

The Government hereby elects to exercise its right and option contained in Article 22 of Contract W 535 ac–15566 to increase the number of airplanes and spare parts to be furnished under the terms of Items 1 and 2 of Article 16 of said contract and it is mutually understood and agreed by the parties hereto that so many of the provisions of the contract as are affected by said increase are changed as set forth hereinbelow:

The lot quantity of airplanes, Primary Training, being purchased under the terms of Contract W 535 ac–15566 is hereby increased to * * *. Total additional cost $4,870,500.00.

The lot quantity of spare parts called for under the terms of Item 2 of Article 16 of Contract W 535 ac–15566 is increased from a total money value not to exceed $270,270.00 to a total maximum cost of not to exceed $754,770.00, total additional cost—$484,500.00.

* * * Weight and Balance Reports and Weight Statement at a total cost of $87.00.

It is understood and agreed that certain plant facilities in addition to those now available to the Contractor will be required by the Contractor to enable him to comply with the delivery schedule pertaining to the additional * * * airplanes called for and herein contained. If an agreement satisfactory to the contractor providing for the construction or acquisition of such facilities is not entered into and, if required, approved within * * * days from and after the date of approval of this Change Order, then and in that event negotiations shall, at the written request of the Contractor delivered to the Contracting Officer, be entered into by and between the Contractor and the Contracting Officer for the amendment of such delivery schedule.

Price Adjustment: The contract prices stated in this contract for Airplanes and Spare Parts are subject to adjustments for changes in labor costs.

It is expressly agreed that quotas for labor will not be altered on account of delays in the completion of the airplanes and spare parts.

Option—The Government reserves the right at any time within * * * days from and after the date of approval of this Change Order to require the Contractor to install in any or all of the additional * * * airplanes, engines of a different type and model from those now required to be installed.

It is expressly understood and agreed by both parties hereto that the contractor hereby agrees:

To pay into the Treasury profit, as hereinafter provided shall be determined by the Treasury Department, in excess of 12 per centum of the total contract prices, of such contracts within the scope of the law as are completed by the particular contracting party within the income taxable year.

This contract authorized under Section 1 (a) Act of July 2, 1940.

NEAL H. MCKAY,
Major, Quartermaster Corps,
Assistant to the Director of Purchases and Contracts.

[F. R. Doc. 40-5199; Filed, November 29, 1940; 9:49 a. m.]

[Contract No. W 535 ac-15588, (3645)]

SUMMARY OF CONTRACT FOR SUPPLIES

CONTRACTOR: AVIATION MANUFACTURING CORPORATION, LYCOMING DIVISION

Contract for: * * * R-680-9 Aircraft Engines, * * * R-680-11 Aircraft Engines, and Data.

Amount: $5,120,997.50.

Place: Materiel Division, Air Corps, U. S. Army, Wright Field, Dayton, Ohio.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following Procurement Authorities, the available balances of which are sufficient to cover cost of same:

AC 33 P 12-3037 A 0705.002-01--	$2,616,784.50
AC 26 P 81-3037 A 0705-01-----	2,504,213.00

This contract, entered into this Seventh day of September 1940.

ARTICLE 1. *Scope of this contract.* The contractor shall furnish and deliver to the Government all of the aeronautical engines and data as set forth more particularly in Article 16 hereof, for the consideration stated, Five Million One Hundred Twenty Thousand Nine Hundred Ninety Seven Dollars Fifty Cents ($5,120,997.50), in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof.

ART. 2. *Changes.* Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Federal Specifications. Changes as to shipment and packing of all supplies may also be made as above provided.

ART. 5. *Delays—Damages.* If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified in Article 1, or any extension thereof, the Government may by written notice terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay.

ART. 8. *Payments.* The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either $1,000 or 50 percent of the total amount of the contract.

ART. 16. *Articles and supplies called for and prices therefor.* The Contractor shall furnish and deliver to the Government all of the following articles in the quantities and at the prices indicated below:

Item 1. * * * Aircraft Engines—total, $2,396,434.50.
Item 1a. * * * Aircraft Engines—total $1,943,055.00.
Item 2. * * * Aircraft Engines—total $220,350.00.
Item 2a. * * * Aircraft Engines—total $561,158.00.

The Contractor shall likewise furnish and deliver to the Government, without additional cost therefor, the following data:

* * * vandykes of bill of material.
* * * vandykes of drawings and data lists.
* * * Handbook of Instructions.

ART. 20. *Advance payments.* Advance Payments may be made from time to time for the supplies called for when the Secretary of War deems such action necessary in the interest of the National Defense: *Provided, however,* That the total amount of money so advanced shall not exceed 30 percentum of the contract price of the articles called for.

ART. 21. *Price adjustment.* The contract prices stated in this contract for aircraft engines are subject to adjustments for changes in labor and material costs.

It is expressly agreed that quotas for labor will not be altered on account of delays in the completion of the engines.

ART. 23. *Options.* The Government is granted the right and option at any time within * * * days from and after the date of approval of this contract to increase the quantity of aircraft engines called for under the terms of paragraph (1) of Article 16 hereof.

ART. 25. *Termination when contractor not in default.* If, in the opinion of the Contracting Officer upon the approval of The Secretary of War, the best interests of the Government so require, this contract may be terminated by the Government, even though the contractor be not in default, by a notice in writing relative thereto from the Contracting Officer to the contractor.

It is expressly understood and agreed by both parties hereto that the contractor hereby agrees:

To pay into the Treasury profit, as hereinafter provided shall be determined by the Treasury Department, in excess of 8 per centum of the total contract prices of such contracts within the scope of the law as are completed by the particular contracting party within the income taxable year.

[Serial No. 3395 Date 9-26-40, Change No. 1 to Contract No. W 535 ac-15588, Dated September 7, 1940]

Change Order

WAR DEPARTMENT, AIR CORPS, MATERIEL DIVISION

WRIGHT FIELD, DAYTON, OHIO

Aviation Manufacturing Corporation, Lycoming Division, Williamsport, Pennsylvania.
Additional Aircraft Engines.
Contract W 535 ac-15588.

The Government hereby elects to exercise its right and option contained in Article 23 of Contract W 535 ac-15588 to increase the quantity of Aircraft Engines called for under the terms of Paragraph (1) of Article 16 of the contract, and it is mutually understood and agreed by the parties hereto that so many of the provisions of the contract as are effected by said increase are changed as set forth hereinbelow:

The lot quantity of Aircraft Engines being purchased under the terms of Item 1 of Paragraph (1) of Article 16 of Contract W 535 ac-15588, is hereby increased from * * * to * * * Additional engines—$3,828,538.00.

The lot quantity of Aircraft Engines called for under the terms of Item 1 (a) of Paragraph (1) of Article 16 of Contract W 535 ac-15588 is hereby increased from * * * to * * *. Total for * * * additional engines $2,875,001.75.

It is expressly understood and agreed to by and between the parties hereto that the Government is granted and reserves the right to require the Contractor to furnish and deliver to the Government spare parts for each of the engines called for under the terms of Paragraph (1) of Article 16 of Contract W 535 ac-15588, as amended: *Provided, however,* The total price of said spare parts shall not exceed the money value of * * * percent of the total contract price of the engines to which they relate. This option shall be exercised, if at all, by notice in writing

from the Contracting Officer to the Contractor within * * * days from and after the date of approval of this Change Order.

Procurement Authorities:

AC 34 P 12–3037 A 0705–01____ $3,828,538.00
AC 26 P 81–3037 A 0705–01____ 2,875,001.75

This contract authorized under the provisions of Paragraph 4g (1), A.R. 5–240.

NEAL H. MCKAY,
Major, Quartermaster Corps,
Assistant to the Director of
Purchases and Contracts.

[F. R. Doc. 40–5195; Filed, November 29, 1940; 9:48 a. m.]

[Contract No. W 535 ac–15999, (3773)]

SUMMARY OF CONTRACT FOR SUPPLIES

CONTRACTOR: CURTISS-WRIGHT CORPORATION, ST. LOUIS AIRPLANE DIVISION

Contract for: * * * C–46 Airplanes, Spare Parts & Data. Amount: $36,176,878.00.

Place: Matériel Division, Air Corps, U. S. Army, Wright Field, Dayton, Ohio.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following Procurement Authorities, the available balances of which are sufficient to cover costs of same:

AC 34 P 12–3037 A 0705–01_____ $33,561,682.00
AC 28 P 82–3037 A 0705–01_____ 2,615,196.00

This contract, entered into this 20th day of September, 1940.

ART. 1. *Scope of this contract.* The contractor shall furnish and deliver to the Government all of the airplanes, spare parts and data as set forth more particularly in Article 16 hereof for the consideration stated not to exceed Thirty-six Million One Hundred Seventy Six Thousand Eight Hundred Seventy Eight Dollars ($36,176,878.00), in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof.

ART. 2. *Changes.* Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Federal Specifications. Changes as to shipment and packing of all supplies may also be made as above provided.

ART. 5. *Delays—Damages.* If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified in Article 1, or any extension thereof, the Government may by written notice terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay.

ART. 8. *Payments.* The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either $1,000 or 50 percent of the total amount of the contract.

ART. 16. *Articles and supplies called for and payment therefor.* The Contractor shall furnish and deliver to the Government all of the following airplanes, spare parts and data at the prices hereinbelow indicated:

Item 1. * * * Airplanes, Cargo type, total cost of $33,561,682.00.

Item 2. Certain spare parts for all of the airplanes, such spare parts shall not exceed a total price of $2,625,196.00.

Item 3. * * * Direct Reading, Dark Brown Negatives, no cost.

Item 4. * * * Weight Data, no cost.

Partial payments will be made as the work progresses at the end of each calendar month or as soon thereafter as practicable on authenticated statements of expenditures of the Contractor approved by the Contracting Officer.

The Government shall furnish to the Contractor for installation in the airplanes called for under the terms of this contract all materials, equipment and supplies listed in Contractor's Detailed Specification Report No. 20–Z16 and revisions thereto, hereinbefore referred to, and elsewhere listed in this contract as being furnished by the Government.

ART. 23. *Advance payments.* Advance payments may be made from time to time for the supplies called for.

ART. 25. *Plant facilities contingency.* It is understood and agreed that certain plant facilities in addition to those now available to the Contractor will be required by the Contractor to enable him to comply with the delivery schedules contained in this contract. If an agreement satisfactory to the Contractor, providing for the construction or acquisition of such facilities, is not entered into and, if required, approved on or before * * * then and in such event negotiations shall, at the written request of the Contractor delivered to the Contracting Officer, be entered into by and between the Contractor and the Contracting Officer for the amendment of such delivery schedules.

ART. 26. *Price adjustment.* The contract prices stated in this contract for airplanes and spare parts are subject to adjustments for changes in labor and material costs.

It is expressly agreed that quotas for labor will not be altered on account of delays in the completion of the airplanes and spare parts.

ART. 27. *Termination when contractor not in default.* If, in the opinion of the Contracting Officer upon the approval of The Secretary of War, the best interests of the Government so require, this contract may be terminated by the Government, even though the contractor be not in default, by a notice in writing relative thereto from the Contracting Officer to the contractor.

It is expressly understood and agreed by both parties hereto that the contractor hereby agrees:

To pay into the Treasury profit, as hereinafter provided shall be determined by the Treasury Department, in excess of 12 per centum of the total contract prices, of such contracts within the scope of the law as are completed by the particular contracting party within the income taxable year.

ART. 37. *Title to property where partial payments are made.* The title to all property upon which any partial payment is made prior to the completion of this contract, shall vest in the Government.

ART. 39. *Fire insurance.* The contractor agrees to insure against fire all property in its possession upon which a partial payment is about to be made, such insurance to be in a sum at least equal to the amount of such payment plus all other partial payments.

This contract authorized under the provisions of Section 1 (a), Act of July 2, 1940.

NEAL H. MCKAY,
Major, Quartermaster Corps,
Assistant to the Director of
Purchases and Contracts.

[F. R. Doc. 40–5198; Filed, November 29, 1940; 9:49 a. m.]

[Contract No. W 978 eng–1569]

SUMMARY OF CONTRACT FOR SUPPLIES

CONTRACTOR: SPERRY GYROSCOPE COMPANY, INC.

Contract for: * * * Searchlight Units.

Amount: $9,075,150.00.

Place: Office, Chief of Engineers, 1st and M Sts. N.E., Washington, D. C.

This contract, entered into this twenty-third day of September 1940.

Scope of this contract. The contractor shall furnish and deliver * * * Searchlight Units, for the consideration stated $9,075,150.00, in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof.

Changes. Where the supplies to be furnished are to be specially manufactured in accordance with drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Federal Specifications. Changes as to

shipment and packing of all supplies may also be made as above provided.

Delays—Liquidated damages. If the contractor refuses or fails to make delivery of the materials or supplies within the time specified in Article 1, or any extension thereof, the actual damage to the Government for the delay will be impossible to determine, and in lieu thereof the contractor shall pay to the Government, as fixed, agreed, and liquidated damages for each calendar day of delay in making delivery, the amount as set forth in the specifications or accompanying papers, and the contractor and his sureties shall be liable for the amount thereof.

Payments. The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either $1,000 or 50 percent of the total amount of the contract.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the Procurement Authorities shown herein, the available balances of which are sufficient to cover cost of same.

Procurement Authorities:

Engineer Service Army, 1940–1941—Eng. 202 P3–3030 A (0905) .115–01.

NEAL H. MCKAY,
Major, Quartermaster Corps,
Assistant to the Director of
Purchases and Contracts.

[F. R. Doc. 40–5196; Filed, November 29, 1940; 9:48 a. m.]

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. A–181]

PETITION OF THE BINKLEY MINING COMPANY OF MISSOURI, A CODE MEMBER IN DISTRICT NO. 15, FOR MODIFICATION OF THE EFFECTIVE MINIMUM PRICES ESTABLISHED FOR THE COALS PRODUCED AT PETITIONER'S BEE-VEER MINE (MINE INDEX NO. 13) ON SHIPMENTS OF RAILROAD LOCOMOTIVE FUEL TO THE CHICAGO, BURLINGTON AND QUINCY RAILROAD.

NOTICE OF AND ORDER FOR HEARING

A petition, pursuant to the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party;

It is ordered, That a hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be held on January 14, 1941, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room where such hearing will be held.

It is further ordered, That Floyd McGown or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to prepare and submit to the Director proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in these proceedings and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before January 9, 1941.

All persons are hereby notified that the hearing in the above-entitled matter and any orders entered therein, may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of interveners or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to the modification of minimum prices established for the Bee-Veer Mine (Mine Index No. 13), located in Production Group No. 3 of District No. 15, on shipments of railroad locomotive fuel to the Chicago, Burlington and Quincy Railroad by reducing the minimum price established for railroad locomotive fuel (which includes all sizes except 2″ x 0 screenings) from $2.10 to $2.05 per ton and by reducing the minimum price established for 2″ x 0 screenings from $1.70 to $1.60 per ton.

Dated: November 28, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40–5215; Filed, November 29, 1940; 11:39 a. m.]

[Docket No. A–304]

PETITION OF THE PURSGLOVE COAL MINING COMPANY, A CODE MEMBER IN DISTRICT NO. 3, FOR A REDUCTION IN THE EFFECTIVE MINIMUM PRICES FOR THE COALS OF ITS PURSGLOVE NO. 2 MINE (MINE INDEX NO. 120) IN SIZE GROUP 10 FOR SHIPMENT INTO MARKET AREAS 2 TO 16 INCLUSIVE, 20, 21 AND 100

NOTICE OF AND ORDER FOR HEARING

A petition, pursuant to the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party;

It is ordered, That a hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be held on December 16, 1940, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room where such hearing will be held.

It is further ordered, That Thurlow G. Lewis or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to prepare and submit to the Director proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in these proceedings and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before December 11, 1940.

All persons are hereby notified that the hearing in the above-entitled matter and any orders entered therein, may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of interveners or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to the petition of the Pursglove Coal Mining Company, a code member in District No. 3, requesting a reduction of the effective minimum prices for the 3/8" x 0 coals of its Pursglove No. 2 mine (Mine Index No. 120) for shipments to Market Areas 2 to 16 inclusive, 20, 21, and 100.

Dated: November 28, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40-5216; Filed, November 29, 1940; 11:39 a. m.]

[Docket Nos. A-289, A-337]

PETITIONS OF THE CITY OF CINCINNATI AND THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF CINCINNATI FOR AN ORDER ESTABLISHING F. A. S. PRICES; THE COUNTY OF HAMILTON, OHIO, FOR THE ESTABLISHMENT OF F. A. S. PRICES

ORDER OF CONSOLIDATION, NOTICE OF AND ORDER FOR HEARING, AND ORDER GRANTING TEMPORARY RELIEF

Petitions pursuant to the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named parties, and the matters involved being subject to consolidation;

It is ordered, That a joint hearing in the above-entitled matters under the applicable provisions of said Act and the rules of the Division be held on December 11, 1940, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room where such hearing will be held.

It is further ordered, That Charles S. Mitchell or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, to determine the order of presentation of various petitions, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to prepare and submit to the Director proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in these proceedings and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Any petitioner desiring a separate hearing may file a motion requesting a separate hearing, setting forth the reasons why petitioner is entitled to a separate hearing. Petitions of intervention, as well as motions for separate hearings on any of the petitions herein consolidated, shall be filed with the Bituminous Coal Division on or before December 6, 1940.

All persons are hereby notified that the hearing in the above-entitled matters and any orders entered therein, may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of interveners or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matters concerned herewith are in regard to Docket No. A-289, the petition of the City of Cincinnati and the Board of Education of the City School District of the City of Cincinnati, that petitioners be enabled to purchase coal from District 8 at the minimum f. o. b. mine prices for free alongside delivery; Docket No. A-337, the petition of Hamilton County, Ohio, that petitioner be enabled to purchase coal from District 8 at the minimum f. o. b. mine prices for free alongside delivery.

It is further ordered, That the consolidated proceeding shall hereafter be titled:

[Docket No. A-289, et al.]

IN THE MATTER OF THE PETITION OF CITY OF CINCINNATI, ET AL., REQUESTING F. A. S. PRICES

A request for temporary relief pending the disposition of the petition having been made by the City of Cincinnati, et al., in Docket No. A-289, and the Director having considered the request and the views expressed in support thereof by petitioner and Consumers' Counsel at an informal conference held on November 8, 1940, on notice to interested persons, and the Director being of the opinion that a reasonable showing of necessity for temporary relief has been made;

Now, therefore, it is ordered, That the request for temporary relief is granted, and that pending the final disposition of the petitions the Schedule of Effective Minimum Prices for District No. 8 For All Shipments Except Truck is amended by making the following additions to the list of consumers on page 38 to whom sales at free alongside prices may be made: The City of Cincinnati, Ohio, (for consumption within the city limits), the Board of Education of the City School District of the City of Cincinnati (for consumption within the city limits).

A request for temporary relief pending the disposition of the petition having been made by County of Hamilton, Ohio, in Docket No. A-337, and the Director having considered the petition and the affidavits in support thereof and being of the opinion that there has been a reasonable showing of necessity for temporary relief;

Now, therefore, it is ordered, That the request for temporary relief is granted, and that pending the final disposition of the petition the Schedule of Effective Minimum Prices for District No. 8 For All Shipments Except Truck is amended by making the following addition to the list of consumers on page 38 to whom sales at free alongside prices may be made: County of Hamilton, Ohio (for consumption at the County Home, the Court House, and the Tuberculosis Hospital).

Notice is hereby given that applications to stay, terminate or modify the temporary relief herein granted may be filed pursuant to the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

Dated: November 28, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40-5217; Filed, November 29, 1940; 11:39 a. m.]

[Docket No. A-46]

PETITION OF BLUE BIRD COAL COMPANY FOR REVISION OF EFFECTIVE MINIMUM PRICES FOR PRICE GROUP 1 OF DISTRICT 10, PURSUANT TO SECTION 4 II (d) OF THE BITUMINOUS COAL ACT

NOTICE OF AND ORDER POSTPONING HEARING

The original petitioner in the above-entitled matter having shown reasonable cause why the hearing therein, heretofore set for November 29, 1940, by Order of the Director dated November 12, 1940, should be postponed;

It is ordered, That the hearing in the matter entitled Docket No. A-46 be postponed from November 29, 1940, until January 14, 1941, at 10:00 a. m., and be heard at that time before D. C. McCurtain or any other officer or officers of the Division duly designated to preside at said hearing, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street, NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room in which such hearing will be held.

Dated: November 29, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40-5219; Filed, November 29, 1940; 11:40 a. m.]

[Docket No. FD–A–1]

PETITION OF DISTRICT BOARD NO. 11 FOR RELIEF IN RESPECT TO COMPETITION BETWEEN DISTRICT NO. 11 CODE MEMBERS AND VARIOUS VENDORS OF EXISTING STOCKS OF COAL ON DOCKS LOCATED ON LAKE SUPERIOR AND LAKE MICHIGAN, AND RELATED MATTERS, PURSUANT TO SECTION 4 II (d) OF THE BITUMINOUS COAL ACT OF 1937

NOTICE OF AND ORDER FURTHER CONTINUING HEARING

It appearing to the Director appropriate and proper that the above-entitled matter, heretofore continued until December 3, 1940, should be further continued;

It is ordered, That the continued hearing in said matter be postponed from December 3, 1940, until 10 o'clock in the forenoon of January 21, 1941, before the Examiner heretofore designated, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street, NW., Washington, D. C. On such day, the Chief of the Records Section in room 502 will advise as to the room in which such hearing will be held.

Dated: November 29, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40–5218; Filed, November 29, 1940; 11:40 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

PUERTO RICAN SUGARCANE WAGE RATES AND PRICES

NOTICE OF HEARING

Pursuant to the authority contained in subsections (b) and (d) of section 301 and section 511 of the Sugar Act of 1937 (Public, No. 414, 75th Congress), as amended, notice is hereby given that a public hearing will be held at San Juan, Puerto Rico, in the Auditorium of the Ateneo, on December 10, 1940, at 9:00 a. m.

The purpose of such hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining (1), pursuant to the provisions of subsection (b) of section 301 of the said act, fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of the 1941 crop of sugarcane on farms with respect to which applications for payment under the act are made, and (2), pursuant to the provisions of subsection (d) of section 301 of the said act, fair and reasonable prices for the 1941 crop of sugarcane to be paid, under either purchase or toll agreements, by processors who, as producers, apply for payments under the said act; and to receive evidence likely to be of assistance to the Secretary of Agriculture in making recommendations, pursuant to the provisions of section 511 of the said act, with respect to the terms and conditions of contracts between producers and processors of sugarcane.

Such hearing, after being called to order at the time and place mentioned above, may, for convenience, be adjourned to such other place in the same city as the presiding officers may designate and may be continued from day to day within the discretion of the presiding officers.

G. Laguardia, E. T. MacHardy, John C. Bagwell and J. B. Frisbie are hereby designated as presiding officers to conduct, either jointly or severally, the foregoing hearing.

Done at Washington, D. C., this 29th day of November 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CLAUDE R. WICKARD,
Secretary of Agriculture.

[F. R. Doc. 40–5213; Filed, November 29, 1940; 11:34 a. m.]

Surplus Marketing Administration.

DETERMINATION WITH RESPECT TO ISSUANCE OF ORDER, AS AMENDED, REGULATING HANDLING OF MILK IN CINCINNATI, OHIO, MARKETING AREA

Whereas the Secretary of Agriculture, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, having reason to believe that the execution of amendments to a tentatively approved marketing agreement, as amended, and the issuance of amendments to Order No. 22, as amended, both of which regulate the handling of milk in the Cincinnati, Ohio, marketing area, would tend to effectuate the declared policy of the act, gave, on the 12th day of July 1940, notice of a public hearing to be held at Cincinnati, Ohio, on certain proposed amendments to said tentatively approved marketing agreement, as amended, and to said Order No. 22, as amended, which hearing was held on the 17th, 19th, and 20th days of July 1940, and reopened [1] on the 11th and 12th days of September 1940, and at said times and place conducted a public hearing at which all interested parties were afforded an opportunity to be heard on the said proposed amendments; and

Whereas after said hearing and after the tentative approval by the Secretary, on the 14th day of November 1940, of a marketing agreement, as amended, handlers of more than fifty percent of the volume of milk covered by Order No. 22, as amended, which is marketed within the Cincinnati, Ohio, marketing area, refused or failed to sign such tentatively approved marketing agreement, as amended, relating to milk:

[1] 5 F.R. 3594.

Now, therefore, the Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby determines:

1. That the refusal or failure of said handlers to sign said tentatively approved marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the act;

2. That the issuance of the proposed Order No. 22, as amended, is the only practical means, pursuant to such policy, of advancing the interests of producers of milk which is produced for sale in said area; and

3. That the issuance of the proposed Order No. 22, as amended, is approved or favored by over two-thirds of the producers who participated in a referendum conducted by the Secretary, and who, during the month of June 1940, said month having been determined by the Secretary to be a representative period, were engaged in the production of milk for sale in said area.

In witness whereof, Claude R. Wickard, Secretary of Agriculture of the United States, has executed this determination in duplicate, and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 26th day of November 1940.

[SEAL] CLAUDE R. WICKARD,
Secretary of Agriculture.

Approved:

FRANKLIN D ROOSEVELT
The President of the United States.

NOVEMBER 27, 1940.

[F. R. Doc. 40–5212; Filed, November 29, 1940; 11:34 a. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5891]

APPLICATION OF TRENT BROADCAST CORPORATION (NEW)

NOTICE OF HEARING

Dated, May 4, 1940; for construction permit; class of service, broadcast; class of station, broadcast; location, Trenton, New Jersey; operating assignment specified: Frequency, 1230 kc.; power, 1 kw. night, 1 kw. day (DA—night and day); hours of operation, unlimited.

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine whether the applicant is legally, technically, financially and otherwise qualified to construct and operate a station as herein proposed;

2. Because of the pendency of the application of WOAX, Inc., for a construction permit (B1–P–2959);

3. To determine the nature of the service, both program and electrical, to be rendered by the station proposed herein;

4. To determine the nature, extent and effect of any interference which would result within the primary service areas of Stations WOL (Washington, D. C.) and WNAC (Boston, Massachusetts) due to the operation of the station proposed herein;

5. To determine the nature, extent and effect of any interference which would result within the primary service area of the station proposed herein, due to the operation of Stations WOL and WNAC;

6. To determine whether the granting of this application and the application of WOAX, Inc. (B1–P–2959), or either of them, will serve public interest, convenience and necessity.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

Trent Broadcast Corporation,
% A. Harry Zoog,
4203 Steward Avenue,
Atlantic City, New Jersey.

Dated at Washington, D. C., November 28, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 40–5210; Filed, November 29, 1940; 11:32 a. m.]

[Docket No. 5951]

APPLICATION OF WOAX, INCORPORATED (WTNJ)

NOTICE OF HEARING

Dated, July 29, 1940; for construction permit; class of service, broadcast; class of station, broadcast; location, Trenton, New Jersey; operating assignment specified: Frequency, 1230 kc.; power, 1 kw. night, 1 kw. day (DA for night & day); hours of operation, unlimited.

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine whether the applicant is financially qualified to construct and operate Station WTNJ, as herein proposed.

2. To determine whether the applicant has made false statements to the Commission in its application.

3. To determine whether the principal officers, directors and stockholders of the applicant are qualified by reason of character, training and previous experience to construct and operate Station WTNJ as proposed.

4. To determine the nature of the service, both program and electrical, to be rendered by Station WTNJ operating as proposed.

5. To determine the nature, extent and effect of any interference which would result within the primary service areas of Stations WOL (Washington, D. C.) and WNAC (Boston, Massachusetts) due to the operation of Station WTNJ as proposed.

6. To determine the nature, extent and effect of any interference which would result within the primary service area of Station WTNJ operating as proposed, due to the operation of Stations WOL and WNAC.

7. Because of the pendency of the application for construction permit submitted in behalf of Trent Broadcast Corporation (B1–P–2861).

8. To determine whether the granting of this application and the application of Trent Broadcast Corporation (B1–P–2861) or either of them, will serve public interest, convenience, and necessity.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of § 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

WOAX, Incorporated,
Radio Station WTNJ,
416 Bellevue Avenue,
Trenton, New Jersey.

Dated at Washington, D. C., November 28, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 40–5209; Filed, November 29, 1940; 11:32 a. m.]

FEDERAL POWER COMMISSION.

[Docket No. G–188]

IN THE MATTER OF PUBLIC SERVICE COMPANY OF INDIANA

ORDER FIXING DATE OF HEARING AND SUSPENDING RATE SCHEDULE

NOVEMBER 26, 1940.

It appearing to the Commission that:

(a) On September 12, 1940, Public Service Company of Indiana filed with the Commission a document dated August 28, 1940, designated in the files of the Commission as Public Service Company of Indiana Rate Schedule FPC No. 3–G, providing for sale of natural gas by Public Service Company of Indiana to Northern Indiana Power Company for resale for ultimate public consumption for domestic, commercial, industrial, or any other use;

(b) On October 31, 1940, Public Service Company of Indiana filed with the Commission a document dated October 29, 1940, designated in the files of the Commission as Public Service Company of Indiana Rate Schedule FPC No. 4–G, providing that increased rates or charges for such sales of natural gas to Northern Indiana Power Company shall be made effective as of December 1, 1940;

(c) The schedule of increased rates and charges contained in said Public Service Company of Indiana Rate Schedule FPC No. 4–G may result in excessive rates or charges to Northern Indiana Power Company or place an undue burden on ultimate consumers of natural gas, and said increased rates and charges have not been shown to be justified;

The Commission finds that:

It is necessary, desirable, and in the public interest that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rates or charges, and that said proposed increased rates and charges be suspended pending such hearing and the decision thereon;

The Commission upon its own motion orders that:

(A) A public hearing be held on February 17, 1941, at 10 o'clock a. m. in the hearing room, Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the lawfulness of the rates and charges contained in said Public Service Company of Indiana Rate Schedule FPC No. 4–G for the sale of natural gas to Northern Indiana Power Company for resale for ultimate public consumption for domestic, commercial, industrial, or any other use;

(B) Pending such hearing and decision thereon, the schedule of increased rates or charges contained in said Pub-

lic Service Company of Indiana Rate Schedule FPC No. 4–G, except insofar as it may provide for the sale of natural gas for resale for ultimate public consumption for industrial use, be and it is hereby suspended until May 1, 1941, or until such time thereafter as said schedule shall have been made effective in the manner prescribed by section 4 (e) of the Natural Gas Act, unless the Commission shall hereafter otherwise order;

(C) During the period of suspension the rates or charges collected and received by Public Service Company of Indiana from Northern Indiana Power Company, as provided in Public Service Company of Indiana Rate Schedule FPC No. 3–G, except insofar as they may be for the sale of natural gas for resale for industrial use, shall remain and continue in full force and effect;

(D) At such hearing, the burden of proof to show that any of the aforesaid proposed increased rates or charges are just and reasonable shall be upon Public Service Company of Indiana.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 40–5200; Filed, November 29, 1940; 9:50 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 4201]

IN THE MATTER OF B. T. CLIFTON, INDIVIDUALLY, AND TRADING AS ASSOCIATES SALES AGENCY

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 26th day of November, A. D. 1940.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress. (38 Stat. 717; 15 U.S.C.A., section 41)

It is ordered, That W. W. Sheppard, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, December 6, 1940, at two o'clock in the afternoon of that day (central standard time) in Hearing room of the Chamber of Commerce, Birmingham, Alabama.

Upon completion of testimony for the Federal Trade Commission, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40–5207; Filed, November 29, 1940; 11:23 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 1–411]

IN THE MATTER OF DISTRICT BOND COMPANY (CALIFORNIA) COMMON STOCK, $5 PAR VALUE

ORDER GRANTING APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 28th day of November, A. D. 1940.

The District Bond Company (California), pursuant to section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2–1 (b) promulgated thereunder, having made application to withdraw its Common Stock, $5 Par Value, from listing and registration on the Los Angeles Stock Exchange; and

After appropriate notice, a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on December 13, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–5225; Filed, November 29, 1940; 11:48 a. m.]

[File No. 1–585]

IN THE MATTER OF VIKING PUMP COMPANY COMMON STOCK, NO PAR VALUE $2.40 CUMULATIVE PREFERRED STOCK, NO PAR VALUE

ORDER SETTING HEARING ON APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 28th day of November, A. D. 1940.

The Viking Pump Company, pursuant to section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2–1 (b) promulgated thereunder, having made application to the Commission to withdraw its Common Stock, No Par Value, and $2.40 Cumulative Preferred Stock, No Par Value, from listing and registration on the Chicago Stock Exchange; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on Monday, December 23, 1940, at the office of the Securities & Exchange Commission, 105 W. Adams Street, Chicago, Illinois, and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Henry Fitts, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–5223; Filed, November 29, 1940; 11:48 a. m.]

[File No. 1–1589]

IN THE MATTER OF CRANDALL-MCKENZIE & HENDERSON, INCORPORATED, COMMON STOCK, NO PAR VALUE

ORDER GRANTING APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 28th day of November, A. D. 1940.

The Crandall-McKenzie & Henderson, Incorporated, pursuant to section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2–1 (b) promulgated thereunder, having made application to withdraw its Common Stock, No Par Value, from listing and registration on the Pittsburgh Stock Exchange; and

After appropriate notice, a hearing having been held in this matter; and

The Commission having considered said application together with the evidence introduced at said hearing, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be and the same is hereby granted, effective at the close of the trading session on December 9, 1940.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40—5224; Filed, November 29, 1940; 11:48 a. m.]

[File No. 1-2093]

IN THE MATTER OF THE REGISTRATION OF BELMONT OSBORN GOLD MINING COMPANY COMMON CAPITAL STOCK, 10 CENTS PAR VALUE, ASSESSABLE

FINDINGS AND ORDER DISMISSING PROCEEDING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 28th day of November A. D. 1940.

Appearances: Arthur J. Berggren of the San Francisco Regional Office, for the Registration Division of the Commission; M. T. Vanderslice, President, J. F. Humberg, Secretary-Treasurer, and J. P. Warren, Director, for the Belmont Osborn Mining Company; Frank J. Carter, Secretary, for the San Francisco Mining Exchange.

Withdrawal from registration and striking from listing—Proceedings by Commission—Public interest. Where it appears that the issuer of securities failed to file the annual report required under section 13 (a) of the Securities Exchange Act and the Rules and Regulations thereunder within the time prescribed, but did file said report before the date of the entry of the order herein; and no question having been raised as to the accuracy of any of the reports filed by the issuer, held the proceedings will be dismissed, without prejudice to any future proceedings.

This proceeding was instituted by the Commission, pursuant to section 19 (a) (2) of the Securities Exchange Act of 1934, to determine whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months or to withdraw the registration of the common capital stock, 10 cents par value, assessable, of the Belmont Osborn Gold Mining Company (hereinafter called the registrant) on the San Francisco Mining Exchange, a national securities exchange.

On or about August 26, 1935, the registrant filed an application with the Commission to list 1,990,830 issued and 1,009,170 unissued shares of this stock on the San Francisco Mining Exchange. The Exchange certified to the Commission approval of these securities for listing and registration, and registration became effective pursuant to section 12 (d) of the Act.

The order instituting this proceeding set forth as the issues to be determined in the hearing (1) whether the registrant has failed to comply with section 13 (a) of the Act, and the Commission's rules promulgated thereunder, in failing to file its annual report on Form 10-K for the fiscal year ended December 31, 1939, within the time prescribed by said statute and rules, and (2) if so, whether it is necessary or appropriate for the protection of investors to suspend or withdraw the registration of registrant's common capital stock.

On September 3, 1940, after appropriate notice to the registrant, the San Francisco Mining Exchange and the public, a hearing was held before a trial examiner at San Francisco, California. Appearances were entered as indicated hereinabove. One stockholder was present and requested that delisting be ordered. The trial examiner has filed an advisory report in which he found inter alia that, in contravention of the requirements of section 13 (a) of the statute and the Commission's rules thereunder, the registrant failed to file with the Commission its annual report for the fiscal year ended December 31, 1939, by the due date for such report, April 30, 1940, but that it did file such report on August 28, 1940.

On an independent review of the record we adopt the foregoing findings of the trial examiner. The accuracy of the reports filed by the registrant has not been put in issue in this proceeding and the annual report for the year ended December 31, 1939, even though not filed by the due date, together with the registration statement and annual reports submitted by the registrant for prior years, will contribute to making the files of the Commission a public repository of accurate information regarding the affairs of the issuer. As long as the securities of the issuer remain registered, it will be obligated to keep this information accurate and current. Under the circumstances, therefore, we do not find that it is necessary or appropriate for the protection of investors to suspend or withdraw the registration of these securities.

It is therefore ordered, That the instant proceeding to suspend or withdraw the registration of the common capital stock, 10 cents par value, assessable, of Belmont Osborn Gold Mining Company on the San Francisco Mining Exchange be dismissed forthwith. This order is, of course, without prejudice to the institution of a subsequent proceeding under section 19 (a) (2) if it appears that the registrant has failed in any other respect to comply with any provision of the Act or any of the Commission's rules or regulations thereunder.

By the Commission (Chairman Frank, and Commissioners Healy, Eicher, Henderson, and Pike).

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-5226; Filed, November 29, 1940; 11:48 a. m.]

[File No. 1-2282]

IN THE MATTER OF THE REGISTRATION OF CHOLLAR EXTENSION MINING COMPANY COMMON STOCK, 10 CENTS PAR VALUE

FINDINGS AND ORDER DISMISSING PROCEEDING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 28th day of November, A. D. 1940.

Appearances: Arthur J. Berggren, of the San Francisco Regional Office, for the Registration Division of the Commission; Frank J. Carter, Secretary, for the San Francisco Mining Exchange; G. S. Clack, President for the Chollar Extension Mining Company.

Withdrawal from registration and striking from listing—Proceedings by Commission—Public Interest. Where it appears that the issuer of securities failed to file the annual report required under Section 13 (a) of the Securities Exchange Act and the Rules and Regulations thereunder, but did file said report after hearing but before the date of the entry of the order herein; and no question having been raised as to the accuracy of any of the reports filed by the issuer, *held* the proceedings will be dismissed, without prejudice to any future proceedings.

This proceeding was instituted by the Commission pursuant to section 19 (a) (2) of the Securities Exchange Act of 1934 to determine whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months or to withdraw the registration of the common stock, 10 cents par value, of the Chollar Extension Mining Company (hereinafter called the registrant) on the San Francisco Mining Exchange, a national securities exchange.

The registrant filed applications with the Commisison to list a total of 1,500,000 shares of this stock on the San Francisco Mining Exchange. The Exchange certified to the Commission approval of these securities for listing and registration, and registration became effective pursuant to section 12 (d) of the Act.

The order instituting this proceeding set forth as the issues to be determined in the hearing (1) whether the registrant has failed to comply with section 13 (a) of the Act, and the Commission's rules promulgated thereunder, in failing to file its annual report on Form 10-K for the fiscal year ended December 31, 1939, within the time prescribed by said statute and rules, and (2) if so, whether it is necessary or appropriate for the protection of investors to suspend or withdraw the registration of its common stock.

After appropriate notice to the registrant, the San Francisco Mining Exchange and the public, a hearing was held before a trial examiner at San Francisco, California, on September 6 and 13, 1940. The trial examiner has filed an advisory report in which he found that, in contravention of the requirements of Section 13 (a) of the Act and the Commission's rules thereunder, the registrant failed to file with the Commission its annual report for the fiscal year ended December 31, 1939, by the due date for such report, April 30, 1940, and that it is necessary and appropriate for the protection of investors and to aid in the enforcement of the provisions of the Securities Exchange Act of 1934, as amended, that the registration of these shares be withdrawn. The registrant filed exceptions to the report of the trial examiner.

We find that registrant did not file its annual report for the year ended Decem-

ber 31, 1939, within the time specified by the Commission's rules and that the registrant has, therefore, failed to comply with Section 13 (a) and the rules promulgated thereunder. However, on September 20, 1940, after the hearing in this cause, the registrant filed its annual report for the fiscal year ended December 31, 1939. The accuracy of the reports filed by the registrant was not in issue in this proceeding and the annual report for the year ended December 31, 1939, even though not filed by the due date, together with the registration statement and annual reports submitted by the registrant for prior years, will contribute to making the files of the Commission a public repository of accurate information regarding the affairs of the issuer. As long as the securities of the issuer remain registered, it will be obligated to keep this information accurate and current. Under the circumstances, therefore, we do not find that it is necessary or appropriate for the protection of investors to suspend or withdraw the registration of these securities.

It is therefore ordered, That the instant proceeding to suspend or withdraw the registration of the common stock, 10 cents par value, of Chollar Extension Mining Company on the San Francisco Mining Exchange be dismissed forthwith. This order is, of course, without prejudice to the institution of a subsequent proceeding under Section 19 (a) (2) if it appears that the registrant has failed in any other respect to comply with any provision of the Act or any of the Commission's rules or regulations thereunder.

By the Commission (Chairman Frank, and Commissioners Healy, Eicher, Henderson, and Pike).

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–5227; Filed, November 29, 1940; 11:49 a. m.]